COMMENTARY ON ARTICLE 11
CONCERNING THE TAXATION OF INTEREST

I. Preliminary remarks

1. "Interest" is generally taken to mean remuneration on money lent, being remuneration coming within the category of "income from movable capital" (*revenus de capitaux mobiliers*). Unlike dividends, interest does not suffer economic double taxation, that is, it is not taxed both in the hands of the debtor and in the hands of the creditor. Unless it is provided to the contrary by the contract, payment of the tax charged on interest falls on the recipient. If it happens that the debtor undertakes to bear any tax chargeable at the source, this is as though he had agreed to pay his creditor additional interest corresponding to such tax.

(Renumbered and amended on 11 April 1977; see HISTORY)

2. But, like dividends, interest on bonds or debentures or loans usually attracts tax charged by deduction at the source when the interest is paid. This method is, in fact, commonly used for practical reasons, as the tax charged at the source can constitute an advance of the tax payable by the recipient in respect of his total income or profits. If in such a case the recipient is a resident of the country which practises deduction at the source, any double taxation he suffers is remedied by internal measures. But the position is different if he is a resident of another country: he is then liable to be taxed twice on the interest, first by the State of source and then by the State of which he is a resident. It is clear that his double charge of tax can reduce considerably the interest on the money lent and so hamper the movement of capital and the development of international investment.

(Renumbered and amended on 11 April 1977; see HISTORY)

3. A formula reserving the exclusive taxation of interest to one State, whether the State of the beneficiary's residence or the State of source, could not be sure of receiving general approval. Therefore a compromise solution was adopted. It provides that interest may be taxed in the State of residence, but leaves to the State of source the right to impose a tax if its laws so provide, it being implicit in this right that the State of source is free to give up all taxation on interest paid to non-residents. Its exercise of this right will however be limited by a ceiling which its tax cannot exceed but, it goes without saying, the Contracting States can agree to adopt an even lower rate of taxation in the State of source. The sacrifice that the latter would accept in such conditions will be matched by a relief to be given by the State of

residence, in order to take into account the tax levied in the State of source (see Article 23 A or 23 B).

(Renumbered and amended on 11 April 1977; see HISTORY)

4. Certain countries do not allow interest paid to be deducted for the purposes of the payer's tax unless the recipient also resides in the same State or is taxable in that State. Otherwise they forbid the deduction. The question whether the deduction should also be allowed in cases where the interest is paid by a resident of a Contracting State to a resident of the other State, is dealt with in paragraph 4 of Article 24.

(Amended on 23 July 1992; see HISTORY)

II. Commentary on the provisions of the Article

Paragraph 1

5. Paragraph 1 lays down the principle that interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the latter. In doing so, it does not stipulate an exclusive right to tax in favour of the State of residence. The term "paid" has a very wide meaning, since the concept of payment means the fulfilment of the obligation to put funds at the disposal of the creditor in the manner required by contract or by custom.

(Renumbered and amended on 11 April 1977; see HISTORY)

6. The Article deals only with interest arising in a Contracting State and paid to a resident of the other Contracting State. It does not, therefore, apply to interest arising in a third State or to interest arising in a Contracting State which is attributable to a permanent establishment which an enterprise of that State has in the other Contracting State (for these cases, see paragraphs 4 to 6 of the Commentary on Article 21).

(Replaced on 11 April 1977; see HISTORY)

Paragraph 2

7. Paragraph 2 reserves a right to tax interest to the State in which the interest arises; but it limits the exercise of that right by determining a ceiling for the tax, which may not exceed 10 per cent. This rate may be considered a reasonable maximum bearing in mind that the State of source is already entitled to tax profits or income produced on its territory by investments financed out of borrowed capital. The Contracting States may agree in bilateral negotiations upon a lower tax or on exclusive taxation in the State of the beneficiary's residence with respect to all interest payments or, as explained below, as regards some specific categories of interest.

(Amended on 15 July 2005; see HISTORY)

7.1 In certain cases, the approach adopted in paragraph 2, which is to allow source taxation of payments of interest, can constitute an obstacle to international trade or may be considered inappropriate for other reasons. For instance, when the beneficiary of the interest has borrowed in order to finance the operation which earns the interest, the profit realised by way of interest will be much smaller than the nominal amount of interest received; if the interest paid is equal to or exceeds the interest received, there will be either no profit at all or even a loss. The problem, in that case, cannot be solved by the State of residence, since little or no tax will be levied in that State where the beneficiary is taxed on the net profit derived from the transaction. That problem arises because the tax in the State of source is typically levied on the gross amount of the interest regardless of expenses incurred in order to earn such interest. In order to avoid that problem, creditors will, in practice, tend to shift to the debtor the burden of the tax levied by the State of source on the interest and therefore increase the rate of interest charged to the debtor, whose financial burden is then increased by an amount corresponding to the tax payable to the State of source.

(Added on 15 July 2005; see HISTORY)

7.2 The Contracting States may wish to add an additional paragraph to provide for the exclusive taxation in the State of the beneficiary's residence of certain interest. The preamble of that paragraph, which would be followed by subparagraphs describing the various interest subject to that treatment (see below), might be drafted along the following lines:

> 3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident if the beneficial owner of the interest is a resident of that State, and:
>
> *a)* [*description of the relevant category of interest*] ...

(Added on 15 July 2005; see HISTORY)

7.3 The following are some of the categories of interest that Contracting States may wish to consider for the purposes of paragraph 7.2 above.

(Added on 15 July 2005; see HISTORY)

Interest paid to a State, its political subdivisions and to central banks

7.4 Some States refrain from levying tax on income derived by other States and some of their wholly-owned entities (*e.g.* a central bank established as a separate entity), at least to the extent that such income is derived from activities of a governmental nature. Some States are able to grant such an exemption under their interpretation of the sovereign immunity principle (see paragraphs 6.38 and 6.39 of the Commentary on Article 1); others may do it pursuant to provisions of their domestic law. In their bilateral conventions,

many States wish to confirm or clarify the scope of these exemptions with respect to interest or to grant such an exemption in cases where it would not otherwise be available. States wishing to do so may therefore agree to include the following category of interest in a paragraph providing for exemption of certain interest from taxation in the State of source:

a) is that State or the central bank, a political subdivision or local authority thereof;

(Amended on 22 July 2010; see HISTORY)

Interest paid by a State or its political subdivisions

7.5 Where the payer of the interest happens to be the State itself, a political subdivision or a statutory body, the end result may well be that the tax levied at source may actually be borne by that State if the lender increases the interest rate to recoup the tax levied at source. In that case, any benefits for the State taxing the interest at source will be offset by the increase of its borrowing costs. For that reason, many States provide that such interest will be exempt from any tax at source. States wishing to do so may agree to include the following category of interest in a paragraph providing for exemption of certain interest from taxation in the State of source:

b) if the interest is paid by the State in which the interest arises or by a political subdivision, a local authority or statutory body thereof;

In this suggested provision, the phrase "statutory body" refers to any public sector institution. Depending on their domestic law and terminology, some States may prefer to use phrases such as "agency or instrumentality" or "legal person of public law" [*personne morale de droit public*] to refer to such an institution.

(Added on 15 July 2005; see HISTORY)

Interest paid pursuant to export financing programmes

7.6 In order to promote international trade, many States have established export financing programmes or agencies which may either provide export loans directly or insure or guarantee export loans granted by commercial lenders. Since that type of financing is supported by public funds, a number of States provide bilaterally that interest arising from loans covered by these programmes shall be exempt from source taxation. States wishing to do so may agree to include the following category of interest in a paragraph providing for exemption of certain interest from taxation in the State of source:

c) if the interest is paid in respect of a loan, debt-claim or credit that is owed to, or made, provided, guaranteed or insured by, that State or a political subdivision, local authority or export financing agency thereof;

(Added on 15 July 2005; see HISTORY)

Interest paid to financial institutions

7.7 The problem described in paragraph 7.1, which essentially arises because taxation by the State of source is typically levied on the gross amount of the interest and therefore ignores the real amount of income derived from the transaction for which the interest is paid, is particularly important in the case of financial institutions. For instance, a bank generally finances the loan which it grants with funds lent to it and, in particular, funds accepted on deposit. Since the State of source, in determining the amount of tax payable on the interest, will usually ignore the cost of funds for the bank, the amount of tax may prevent the transaction from occurring unless the amount of that tax is borne by the debtor. For that reason, many States provide that interest paid to a financial institution such as a bank will be exempt from any tax at source. States wishing to do so may agree to include the following in a paragraph providing for exemption of certain interest from taxation in the State of source:

d) is a financial institution;

(Amended on 15 July 2014; see HISTORY)

Interest on sales on credit

7.8 The disadvantages described in paragraph 7.1 also arise frequently in the case of sales on credit of equipment and other commercial credit sales. The supplier in such cases very often merely passes on to the customer, without any additional charge, the price he will himself have had to pay to a bank or an export finance agency to finance the credit. In these cases, the interest is more an element of the selling price than income from invested capital. In fact, in many cases, the interest incorporated in the amounts of instalments to be paid will be difficult to separate from the actual sale price. States may therefore wish to include interest arising from such sales on credit in a paragraph providing for exemption of certain interest from taxation in the State of source, which they can do by adding the following subparagraph:

e) if the interest is paid with respect to indebtedness arising as a consequence of the sale on credit of any equipment, merchandise or services;

(Renumbered and amended on 15 July 2005; see HISTORY)

7.9 The types of sales on credit referred to in this suggested provision comprise not only sales of complete units, but also sales of separate components thereof. Sales financed through a general line of credit provided by a seller to a customer constitute sales on credit as well for the purposes of the provision. Also, it is immaterial whether the interest is stipulated separately in addition to the sale price or is included from the outset in the price payable by instalments.

(Renumbered and amended on 15 July 2005; see HISTORY)

Interest paid to some tax-exempt entities (e.g. pension funds)

7.10 Under the domestic laws of many States, pension funds and similar entities are generally exempt from tax on their investment income. In order to achieve neutrality of treatment as regards domestic and foreign investments by these entities, some States provide bilaterally that income, including interest, derived by such an entity resident of the other State shall also be exempt from source taxation. States wishing to do so may agree bilaterally on a provision drafted along the lines of the provision found in paragraph 69 of the Commentary on Article 18.

(Added on 15 July 2005; see HISTORY)

7.11 If the Contracting States do not wish to exempt completely any or all of the above categories of interest from taxation in the State of source, they may wish to apply to them a lower rate of tax than that provided for in paragraph 2 (that solution would not, however, seem very practical in the case of interest paid by a State or its political subdivision or statutory body). In that case, paragraph 2 might be drafted along the following lines:

> 2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:
>
> *a)* *[lower rate of tax]* per cent of the gross amount of the interest in the case of interest paid *[description of the relevant category of interest]* ...
>
> *b)* 10 per cent of the gross amount of the interest in all other cases.
>
> The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.

If the Contracting States agree to exempt some of the above categories of interest, this alternative provision would be followed by a paragraph 3 as suggested in paragraph 7.2 above.

(Added on 15 July 2005; see HISTORY)

7.12 Contracting States may add to the categories of interest enumerated in the paragraphs above, other categories in regard to which the imposition of a tax in the State of source might appear to them to be undesirable.

(Renumbered on 15 July 2005; see HISTORY)

8. Attention is drawn generally to the following case: the beneficial owner of interest arising in a Contracting State is a company resident in the other Contracting State; all or part of its capital is held by shareholders resident outside that other State; its practice is not to distribute its profits in the form of dividends; and it enjoys preferential taxation treatment (private investment

company, base company). The question may arise whether, in the case of such a company, it is justifiable to allow in the State of source of the interest the limitation of tax which is provided in paragraph 2. It may be appropriate, when bilateral negotiations are being conducted, to agree upon special exceptions to the taxing rule laid down in this Article, in order to define the treatment applicable to such companies.

(Renumbered on 15 July 2005; see HISTORY)

8.1 *(Renumbered on 15 July 2005; see HISTORY)*

8.2 *(Renumbered on 15 July 2005; see HISTORY)*

9. The requirement of beneficial owner was introduced in paragraph 2 of Article 11 to clarify the meaning of the words "paid to a resident" as they are used in paragraph 1 of the Article. It makes plain that the State of source is not obliged to give up taxing rights over interest income merely because that income was paid direct to a resident of a State with which the State of source had concluded a convention.

(Amended on 15 July 2014; see HISTORY)

9.1 Since the term "beneficial owner" was added to address potential difficulties arising from the use of the words "paid to a resident" in paragraph 1, it was intended to be interpreted in this context and not to refer to any technical meaning that it could have had under the domestic law of a specific country (in fact, when it was added to the paragraph, the term did not have a precise meaning in the law of many countries). The term "beneficial owner" is therefore not used in a narrow technical sense (such as the meaning that it has under the trust law of many common law countries[1]), rather, it should be understood in its context, in particular in relation to the words "paid to a resident", and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance.

(Added on 15 July 2014; see HISTORY)

10. Relief or exemption in respect of an item of income is granted by the State of source to a resident of the other Contracting State to avoid in whole or in part the double taxation that would otherwise arise from the concurrent taxation of that income by the State of residence. Where an item of income is paid to a resident of a Contracting State acting in the capacity of agent or

1 For example, where the trustees of a discretionary trust do not distribute interest earned during a given period, these trustees, acting in their capacity as such (or the trust, if recognised as a separate taxpayer) could constitute the beneficial owners of such income for the purposes of Article 11 even if they are not the beneficial owners under the relevant trust law.

nominee it would be inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption merely on account of the status of the direct recipient of the income as a resident of the other Contracting State. The direct recipient of the income in this situation qualifies as a resident but no potential double taxation arises as a consequence of that status since the recipient is not treated as the owner of the income for tax purposes in the State of residence.

(Amended on 15 July 2014; see HISTORY)

10.1 It would be equally inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. For these reasons, the report from the Committee on Fiscal Affairs entitled "Double Taxation Conventions and the Use of Conduit Companies"[1] concludes that a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties.

(Added on 15 July 2014; see HISTORY)

10.2 In these various examples (agent, nominee, conduit company acting as a fiduciary or administrator), the direct recipient of the interest is not the "beneficial owner" because that recipient's right to use and enjoy the interest is constrained by a contractual or legal obligation to pass on the payment received to another person. Such an obligation will normally derive from relevant legal documents but may also be found to exist on the basis of facts and circumstances showing that, in substance, the recipient clearly does not have the right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person. This type of obligation would not include contractual or legal obligations that are not dependent on the receipt of the payment by the direct recipient such as an obligation that is not dependent on the receipt of the payment and which the direct recipient has as a debtor or as a party to financial transactions, or typical distribution obligations of pension schemes and of collective investment vehicles entitled to treaty benefits under the principles of paragraphs 6.8 to 6.34 of the Commentary on Article 1. Where the recipient of interest does have the right to use and enjoy the interest unconstrained by a contractual or legal obligation to pass on the payment received to another person, the recipient is the "beneficial owner" of that interest. It should also be

1 Reproduced in Volume II at page R(6)-1.

noted that Article 11 refers to the beneficial owner of interest as opposed to the owner of the debt-claim with respect to which the interest is paid, which may be different in some cases.

(Added on 15 July 2014; see HISTORY)

10.3 The fact that the recipient of an interest payment is considered to be the beneficial owner of that interest does not mean, however, that the limitation of tax provided for by paragraph 2 must automatically be granted. This limitation of tax should not be granted in cases of abuse of this provision (see also paragraph 8 above). As explained in the section on "Improper use of the Convention" in the Commentary on Article 1, there are many ways of addressing conduit company and, more generally, treaty shopping situations. These include specific anti-abuse provisions in treaties, general anti-abuse rules and substance-over-form or economic substance approaches. Whilst the concept of "beneficial owner" deals with some forms of tax avoidance (*i.e.* those involving the interposition of a recipient who is obliged to pass on the interest to someone else), it does not deal with other cases of treaty shopping and must not, therefore, be considered as restricting in any way the application of other approaches to addressing such cases.

(Added on 15 July 2014; see HISTORY)

10.4 The above explanations concerning the meaning of "beneficial owner" make it clear that the meaning given to this term in the context of the Article must be distinguished from the different meaning that has been given to that term in the context of other instruments[1] that concern the determination of the persons (typically the individuals) that exercise ultimate control over entities or assets. That different meaning of "beneficial owner" cannot be

1 See, for example, *Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The FATF Recommendations* (OECD-FATF, Paris, 2012), which sets forth in detail the international anti-money laundering standard and which includes the following definition of beneficial owner (at page 110): "the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement." Similarly, the 2001 report of the OECD Steering Group on Corporate Governance, *Behind the Corporate Veil: Using Corporate Entities for Illicit Purposes* (OECD, Paris, 2001), defines beneficial ownership as follows (at page 14):

> In this Report, "beneficial ownership" refers to ultimate beneficial ownership or interest by a natural person. In some situations, uncovering the beneficial owner may involve piercing through various intermediary entities and/or individuals until the true owner who is a natural person is found. With respect to corporations, ownership is held by shareholders or members. In partnerships, interests are held by general and limited partners. In trusts and foundations, beneficial ownership refers to beneficiaries, which may also include the settlor or founder.

applied in the context of the Convention. Indeed, that meaning, which refers to natural persons (*i.e.* individuals), cannot be reconciled with the express wording of subparagraph 2 *a*) of Article 10, which refers to the situation where a company is the beneficial owner of a dividend. In the context of Articles 10 and 11, the term "beneficial owner" is intended to address difficulties arising from the use of the words "paid to" in relation to dividends and interest rather than difficulties related to the ownership of the shares or debt-claims on which dividends or interest are paid. For that reason, it would be inappropriate, in the context of these Articles, to consider a meaning developed in order to refer to the individuals who exercise "ultimate effective control over a legal person or arrangement".[1]

(Added on 15 July 2014; see HISTORY)

11. Subject to other conditions imposed by the Article, the limitation of tax in the State of source remains available when an intermediary, such as an agent or nominee located in a Contracting State or in a third State, is interposed between the beneficiary and the payer but the beneficial owner is a resident of the other Contracting State (the text of the Model was amended in 1995 and in 2014 to clarify this point, which has been the consistent position of all member countries).

(Amended on 15 July 2014; see HISTORY)

12. The paragraph lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or by individual assessment. Procedural questions are not dealt with in this Article. Each State should be able to apply the procedure provided in its own law (see, however, paragraph 26.2 of the Commentary on Article 1). Specific questions arise with triangular cases (see paragraph 71 of the Commentary on Article 24).

(Renumbered on 15 July 2005; see HISTORY)

13. It does not specify whether or not the relief in the State of source should be conditional upon the interest being subject to tax in the State of residence. This question can be settled by bilateral negotiations.

(Renumbered on 15 July 2005; see HISTORY)

14. The Article contains no provisions as to how the State of the beneficiary's residence should make allowance for the taxation in the State of source of the interest. This question is dealt with in Articles 23 A and 23 B.

(Renumbered on 15 July 2005; see HISTORY)

15. *(Deleted on 15 July 2005; see HISTORY)*

1 See the Financial Action Task Force's definition quoted in the previous note.

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16. *(Renumbered and amended on 15 July 2005; see HISTORY)*

17. *(Renumbered and amended on 15 July 2005; see HISTORY)*

Paragraph 3

18. Paragraph 3 specifies the meaning to be attached to the term "interest" for the application of the taxation treatment defined by the Article. The term designates, in general, income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits. The term "debt-claims of every kind" obviously embraces cash deposits and security in the form of money, as well as government securities, and bonds and debentures, although the three latter are specially mentioned because of their importance and of certain peculiarities that they may present. It is recognised, on the one hand, that mortgage interest comes within the category of income from movable capital (*revenus de capitaux mobiliers*), even though certain countries assimilate it to income from immovable property. On the other hand, debt-claims, and bonds and debentures in particular, which carry a right to participate in the debtor's profits are nonetheless regarded as loans if the contract by its general character clearly evidences a loan at interest.

(Amended on 23 July 1992; see HISTORY)

19. Interest on participating bonds should not normally be considered as a dividend, and neither should interest on convertible bonds until such time as the bonds are actually converted into shares. However, the interest on such bonds should be considered as a dividend if the loan effectively shares the risks run by the debtor company (see *inter alia* paragraph 25 of the Commentary on Article 10). In situations of presumed thin capitalisation, it is sometimes difficult to distinguish between dividends and interest and in order to avoid any possibility of overlap between the categories of income dealt with in Article 10 and Article 11 respectively, it should be noted that the term "interest" as used in Article 11 does not include items of income which are dealt with under Article 10.

(Replaced on 23 July 1992; see HISTORY)

20. As regards, more particularly, government securities, and bonds and debentures, the text specifies that premiums or prizes attaching thereto constitute interest. Generally speaking, what constitutes interest yielded by a loan security, and may properly be taxed as such in the State of source, is all that the institution issuing the loan pays over and above the amount paid by the subscriber, that is to say, the interest accruing plus any premium paid at redemption or at issue. It follows that when a bond or debenture has been issued at a premium, the excess of the amount paid by the subscriber over

that repaid to him may constitute negative interest which should be deducted from the stated interest in determining the interest that is taxable. On the other hand, the definition of interest does not cover any profit or loss that cannot be attributed to a difference between what the issuer received and paid (*e.g.* a profit or loss, not representing accrued interest or original issue discount or premium, which a holder of a security such as a bond or debenture realises by the sale thereof to another person or by the repayment of the principal of a security that he has acquired from a previous holder for an amount that is different from the amount received by the issuer of the security). Such profit or loss may, depending on the case, constitute either a business profit or a loss, a capital gain or a loss, or income falling under Article 21.

(Amended on 15 July 2014; see HISTORY)

20.1 The amount that the seller of a bond will receive will typically include the interest that has accrued, but has not yet become payable, at the time of the sale of the bond. In most cases, the State of source will not attempt to tax such accrued interest at the time of the alienation and will only tax the acquirer of the bond or debenture on the full amount of the interest subsequently paid (it is generally assumed that in such a case, the price that the acquirer pays for the bond takes account of the future tax liability of the acquirer on the interest accrued for the benefit of the seller at the time of the alienation). In certain circumstances, however, some States tax the seller of a bond on interest that has accrued at the time of the alienation (*e.g.* when a bond is sold to a tax-exempt entity). Such accrued interest is covered by the definition of interest and may therefore be taxed by the State of source. In that case, that State should not again tax the same amount in the hands of the acquirer of the bond when the interest subsequently becomes payable.

(Added on 15 July 2014; see HISTORY)

21. Moreover, the definition of interest in the first sentence of paragraph 3 is, in principle, exhaustive. It has seemed preferable not to include a subsidiary reference to domestic laws in the text; this is justified by the following considerations:

a) the definition covers practically all the kinds of income which are regarded as interest in the various domestic laws;

b) the formula employed offers greater security from the legal point of view and ensures that conventions would be unaffected by future changes in any country's domestic laws;

c) in the Model Convention references to domestic laws should as far as possible be avoided.

It nevertheless remains understood that in a bilateral convention two Contracting States may widen the formula employed so as to include in it any income which is taxed as interest under either of their domestic laws but which is not covered by the definition and in these circumstances may find it preferable to make reference to their domestic laws.

(Renumbered on 23 July 1992; see HISTORY)

21.1 The definition of interest in the first sentence of paragraph 3 does not normally apply to payments made under certain kinds of nontraditional financial instruments where there is no underlying debt (for example, interest rate swaps). However, the definition will apply to the extent that a loan is considered to exist under a "substance over form" rule, an "abuse of rights" principle, or any similar doctrine.

(Added on 21 September 1995; see HISTORY)

22. The second sentence of paragraph 3 excludes from the definition of interest penalty charges for late payment but Contracting States are free to omit this sentence and treat penalty charges as interest in their bilateral conventions. Penalty charges, which may be payable under the contract, or by customs or by virtue of a judgement, consist either of payments calculated *pro rata temporis* or else of fixed sums; in certain cases they may combine both forms of payment. Even if they are determined *pro rata temporis* they constitute not so much income from capital as a special form of compensation for the loss suffered by the creditor through the debtor's delay in meeting his obligations. Moreover, considerations of legal security and practical convenience make it advisable to place all penalty charges of this kind, in whatever form they be paid, on the same footing for the purposes of their taxation treatment. On the other hand, two Contracting States may exclude from the application of Article 11 any kinds of interest which they intend to be treated as dividends.

(Renumbered on 23 July 1992; see HISTORY)

23. Finally, the question arises whether annuities ought to be assimilated to interest; it is considered that they ought not to be. On the one hand, annuities granted in consideration of past employment are referred to in Article 18 and are subject to the rules governing pensions. On the other hand, although it is true that instalments of purchased annuities include an interest element on the purchase capital as well as return of capital, such instalments thus constituting "*fruits civils*" which accrue from day to day, it would be difficult for many countries to make a distinction between the element representing income from capital and the element representing a return of capital in order merely to tax the income element under the same category as income from movable capital. Taxation laws often contain special provisions classifying

annuities in the category of salaries, wages and pensions, and taxing them accordingly.

(Renumbered on 23 July 1992; see HISTORY)

Paragraph 4

24. Certain States consider that dividends, interest and royalties arising from sources in their territory and payable to individuals or legal persons who are residents of other States fall outside the scope of the arrangement made to prevent them from being taxed both in the State of source and in the State of the beneficiary's residence when the beneficiary has a permanent establishment in the former State. Paragraph 4 is not based on such a conception which is sometimes referred to as "the force of attraction of the permanent establishment". It does not stipulate that interest arising to a resident of a Contracting State from a source situated in the other State must, by a kind of legal presumption, or fiction even, be related to a permanent establishment which that resident may have in the latter State, so that the said State would not be obliged to limit its taxation in such a case. The paragraph merely provides that in the State of source the interest is taxable as part of the profits of the permanent establishment there owned by the beneficiary which is a resident in the other State, if it is paid in respect of debt-claims forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In that case, paragraph 4 relieves the State of source of the interest from any limitation under the Article. The foregoing explanations accord with those in the Commentary on Article 7.

(Renumbered on 23 July 1992; see HISTORY)

25. It has been suggested that the paragraph could give rise to abuses through the transfer of loans to permanent establishments set up solely for that purpose in countries that offer preferential treatment to interest income. Apart from the fact that such abusive transactions might trigger the application of domestic anti-abuse rules, it must be recognised that a particular location can only constitute a permanent establishment if a business is carried on therein and, as explained below, that the requirement that a debt-claim be "effectively connected" to such a location requires more than merely recording the debt-claim in the books of the permanent establishment for accounting purposes.

(Amended on 22 July 2010; see HISTORY)

25.1 A debt-claim in respect of which interest is paid will be effectively connected with a permanent establishment, and will therefore form part of its business assets, if the "economic" ownership of the debt-claim is allocated to

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that permanent establishment under the principles developed in the Committee's report entitled *Attribution of Profits to Permanent Establishments*[1] (see in particular paragraphs 72 to 97 of Part I of the report) for the purposes of the application of paragraph 2 of Article 7. In the context of that paragraph, the "economic" ownership of a debt-claim means the equivalent of ownership for income tax purposes by a separate enterprise, with the attendant benefits and burdens (*e.g.* the right to the interest attributable to the ownership of the debt-claim and the potential exposure to gains or losses from the appreciation or depreciation of the debt-claim).

(Added on 22 July 2010; see HISTORY)

25.2 In the case of the permanent establishment of an enterprise carrying on insurance activities, the determination of whether a debt-claim is effectively connected with the permanent establishment shall be made by giving due regard to the guidance set forth in Part IV of the Committee's report with respect to whether the income on or gain from that debt-claim is taken into account in determining the permanent establishment's yield on the amount of investment assets attributed to it (see in particular paragraphs 165 to 170 of Part IV). That guidance being general in nature, tax authorities should consider applying a flexible and pragmatic approach which would take into account an enterprise's reasonable and consistent application of that guidance for purposes of identifying the specific assets that are effectively connected with the permanent establishment.

(Added on 22 July 2010; see HISTORY)

Paragraph 5

26. This paragraph lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident. It provides, however, for an exception to this rule in the case of interest-bearing loans which have an obvious economic link with a permanent establishment owned in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of the permanent establishment, even when he resides in a third State.

(Amended on 21 September 1995; see HISTORY)

27. In the absence of an economic link between the loan on which the interest arises and the permanent establishment, the State where the latter is

1 *Attribution of Profits to Permanent Establishments*, OECD, Paris, 2010.

situated cannot on that account be regarded as the State where the interest arises; it is not entitled to tax such interest, not even within the limits of a "taxable quota" proportional to the importance of the permanent establishment. Such a practice would be incompatible with paragraph 5. Moreover, any departure from the rule fixed in the first sentence of paragraph 5 is justified only where the economic link between the loan and the permanent establishment is sufficiently clear-cut. In this connection, a number of possible cases may be distinguished:

a) The management of the permanent establishment has contracted a loan which it uses for the specific requirements of the permanent establishment; it shows it among its liabilities and pays the interest thereon directly to the creditor.

b) The head office of the enterprise has contracted a loan the proceeds of which are used solely for the purposes of a permanent establishment situated in another country. The interest is serviced by the head office but is ultimately borne by the permanent establishment.

c) The loan is contracted by the head office of the enterprise and its proceeds are used for several permanent establishments situated in different countries.

In cases *a)* and *b)* the conditions laid down in the second sentence of paragraph 5 are fulfilled, and the State where the permanent establishment is situated is to be regarded as the State where the interest arises. Case *c)*, however, falls outside the provisions of paragraph 5, the text of which precludes the attribution of more than one source to the same loan. Such a solution, moreover, would give rise to considerable administrative complications and make it impossible for lenders to calculate in advance the taxation that interest would attract. It is, however, open to two Contracting States to restrict the application of the final provision in paragraph 5 to case *a)* or to extend it to case *c)*.

(Renumbered on 23 July 1992; see HISTORY)

28. Paragraph 5 provides no solution for the case, which it excludes from its provisions, where both the beneficiary and the payer are indeed residents of the Contracting States, but the loan was borrowed for the requirements of a permanent establishment owned by the payer in a third State and the interest is borne by that establishment. As paragraph 5 now stands, therefore, only its first sentence will apply in such a case. The interest will be deemed to arise in the Contracting State of which the payer is a resident and not in the third State in whose territory is situated the permanent establishment for the account of which the loan was effected and by which the interest is payable. Thus the interest will be taxed both in the Contracting State of which the payer is a resident and in the Contracting State of which the beneficiary is a resident.

But, although double taxation will be avoided between these two States by the arrangements provided in the Article, it will not be avoided between them and the third State if the latter taxes the interest on the loan at the source when it is borne by the permanent establishment in its territory.

(Renumbered on 23 July 1992; see HISTORY)

29. It has been decided not to deal with that case in the Convention. The Contracting State of the payer's residence does not, therefore, have to relinquish its tax at the source in favour of the third State in which is situated the permanent establishment for the account of which the loan was effected and by which the interest is borne. If this were not the case and the third State did not subject the interest borne by the permanent establishment to source taxation, there could be attempts to avoid source taxation in the Contracting State through the use of a permanent establishment situated in such a third State. States for which this is not a concern and that wish to address the issue described in the paragraph above may do so by agreeing to use, in their bilateral convention, the alternative formulation of paragraph 5 suggested in paragraph 30 below. The risk of double taxation just referred to could also be avoided through a multilateral convention. Also, if in the case described in paragraph 28, the State of the payer's residence and the third State in which is situated the permanent establishment for the account of which the loan is effected and by which the interest is borne, together claim the right to tax the interest at the source, there would be nothing to prevent those two States together with, where appropriate, the State of the beneficiary's residence, from concerting measures to avoid the double taxation that would result from such claims using, where necessary, the mutual agreement procedure (as envisaged in paragraph 3 of Article 25).

(Amended on 15 July 2005; see HISTORY)

30. As mentioned in paragraph 29, any such double taxation could be avoided either through a multilateral convention or if the State of the beneficiary's residence and the State of the payer's residence agreed to word the second sentence of paragraph 5 in the following way, which would have the effect of ensuring that paragraphs 1 and 2 of the Article did not apply to the interest, which would then typically fall under Article 7 or 21:

> Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be

deemed to arise in the State in which the permanent establishment is situated.

(Amended on 15 July 2005; see HISTORY)

31. If two Contracting States agree in bilateral negotiations to reserve to the State where the beneficiary of the income resides the exclusive right to tax such income, then *ipso facto* there is no value in inserting in the convention which fixes their relations that provision in paragraph 5 which defines the State of source of such income. But it is equally obvious that double taxation would not be fully avoided in such a case if the payer of the interest owned, in a third State which charged its tax at the source on the interest, a permanent establishment for the account of which the loan had been borrowed and which bore the interest payable on it. The case would then be just the same as is contemplated in paragraphs 28 to 30 above.

(Renumbered and amended on 23 July 1992; see HISTORY)

Paragraph 6

32. The purpose of this paragraph is to restrict the operation of the provisions concerning the taxation of interest in cases where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner had they stipulated at arm's length. It provides that in such a case the provisions of the Article apply only to that last-mentioned amount and that the excess part of the interest shall remain taxable according to the laws of the two Contracting States, due regard being had to the other provisions of the Convention.

(Renumbered on 23 July 1992; see HISTORY)

33. It is clear from the text that for this clause to apply the interest held excessive must be due to a special relationship between the payer and the beneficial owner or between both of them and some other person. There may be cited as examples cases where interest is paid to an individual or legal person who directly or indirectly controls the payer, or who is directly or indirectly controlled by him or is subordinate to a group having common interest with him. These examples, moreover, are similar or analogous to the cases contemplated by Article 9.

(Renumbered and amended on 23 July 1992; see HISTORY)

34. On the other hand, the concept of special relationship also covers relationship by blood or marriage and, in general, any community of interests

as distinct from the legal relationship giving rise to the payment of the interest.

(Renumbered on 23 July 1992; see HISTORY)

35. With regard to the taxation treatment to be applied to the excess part of the interest, the exact nature of such excess will need to be ascertained according to the circumstances of each case, in order to determine the category of income in which it should be classified for the purposes of applying the provisions of the tax laws of the States concerned and the provisions of the Convention. This paragraph permits only the adjustment of the rate at which interest is charged and not the reclassification of the loan in such a way as to give it the character of a contribution to equity capital. For such an adjustment to be possible under paragraph 6 of Article 11 it would be necessary as a minimum to remove the limiting phrase "having regard to the debt-claim for which it is paid". If greater clarity of intent is felt appropriate, a phrase such as "for whatever reason" might be added after "exceeds". Either of these alternative versions would apply where some or all of an interest payment is excessive because the amount of the loan or the terms relating to it (including the rate of interest) are not what would have been agreed upon in the absence of the special relationship. Nevertheless, this paragraph can affect not only the recipient but also the payer of excessive interest and if the law of the State of source permits, the excess amount can be disallowed as a deduction, due regard being had to other applicable provisions of the Convention. If two Contracting States should have difficulty in determining the other provisions of the Convention applicable, as cases require, to the excess part of the interest, there would be nothing to prevent them from introducing additional clarifications in the last sentence of paragraph 6, as long as they do not alter its general purport.

(Amended on 28 January 2003; see HISTORY)

36. Should the principles and rules of their respective laws oblige the two Contracting States to apply different Articles of the Convention for the purpose of taxing the excess, it will be necessary to resort to the mutual agreement procedure provided by the Convention in order to resolve the difficulty.

(Renumbered on 23 July 1992; see HISTORY)

Observation on the Commentary

37. *Canada* and the *United Kingdom* do not adhere to paragraph 18 above. Under their domestic legislation, certain interest payments are treated as distributions, and are therefore dealt with under Article 10.

(Renumbered and amended on 23 July 1992; see HISTORY)

Reservations on the Article

Paragraph 2

38. *Chile*, *Hungary*, *Israel*, *Mexico*, *Portugal*, the *Slovak Republic* and *Turkey* reserve their positions on the rate provided in paragraph 2.

(Amended on 15 July 2014; see HISTORY)

39. *Israel* reserves the right to include a provision that would allow a resident of a Contracting State to be taxed on its interest income as if that income were business profits and were taxable under Article 7.

(Added on 15 July 2014; see HISTORY)

40. The *United States* reserves the right to tax certain forms of contingent interest at the rate applicable to portfolio dividends under subparagraph *b)* of paragraph 2 of Article 11. It also reserves the right to tax under its law a form of interest that is "an excess inclusion with respect to residual interest in a real estate mortgage investment conduit".

(Added on 29 April 2000; see HISTORY)

40.1 *Estonia* reserves the right not to include the requirement for the competent authorities to settle by mutual agreement the mode of application of paragraph 2.

(Added on 15 July 2014; see HISTORY)

Paragraph 3

41. *Mexico* reserves the right to consider as interest other types of income, such as income derived from financial leasing and factoring contracts.

(Amended on 28 January 2003; see HISTORY)

42. *Belgium*, *Canada*, *Estonia* and *Ireland* reserve the right to amend the definition of interest so as to secure that interest payments treated as distributions under their domestic law fall within Article 10.

(Amended on 15 July 2014; see HISTORY)

43. *Canada*, *Chile* and *Norway* reserve the right to delete the reference to debt-claims carrying the right to participate in the debtor's profits.

(Amended on 22 July 2010; see HISTORY)

44. *Chile*, *Greece*, *Portugal* and *Spain* reserve the right to widen the definition of interest by including a reference to their domestic law in line with the definition contained in the 1963 Draft Convention.

(Amended on 15 July 2014; see HISTORY)

45. *(Deleted on 22 July 2010; see HISTORY)*

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Paragraph 6

46. *Mexico* reserves the right to include a provision regarding the treatment of interest derived from back-to-back loans, as a safeguard against abuse.

(Added on 15 July 2005; see HISTORY)

HISTORY

Paragraph 1: Corresponds in part to paragraphs 1 and 2 of the 1963 Draft Convention. Paragraphs 1 and 2 were combined and amended when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the headings immediately preceding paragraphs 1 and 2 were deleted. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraphs 1 and 2 and the preceding headings read as follows:

"A. Definition of Interest for the Purposes of this Report

1. "Interest" is generally taken to mean remuneration on money lent, being remuneration coming within the category of "income from movable capital" (revenus de capitaux mobiliers). Such remuneration includes, in particular, interest on and all other income — to which certain taxation laws assimilate prizes and redemption premiums — from:

— bonds or debentures, whether or not secured on immovable property and whether or not carrying a right to participate in profits, which are negotiable securities just as company shares are, being issued in representation of collective loans, offered to the public in equal fractions and ordinarily redeemable at long term or by drawing lots, and quoted on a Stock Exchange or capable of being so quoted;

— government securities;

— indebtedness or debt claims of every kind (whether secured by mortgage, preferential or unsecured);

— notes of indebtedness, deposits, security lodged in money and other rights which can be assimilated to debt claims or loans.

B. International Double Taxation of Interest

2. Unlike dividends, interest does not suffer economic double taxation, that is, it is not taxed both in the hands of the debtor and in the hands of the creditor. Unless it is provided to the contrary by the contract, payment of the tax charged on interest falls on the recipient. If it happens that the debtor undertakes to bear any tax chargeable at the source, this is as though he had agreed to pay his creditor additional interest corresponding to such tax. Subject to the remarks made later (paragraph 17), the debtor may nevertheless show the interest paid and any tax so borne in his enterprise's general expense."

Paragraph 2: Corresponds to paragraph 3 of the 1963 Draft Convention. Paragraph 2 of the 1963 Draft Convention was amended and incorporated into paragraph 1 (see history of paragraph 1) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 3 of the 1963 Draft Convention was amended and renumbered as paragraph 2 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 3 read as follows:

"3. But, like dividends, interest on bonds or debentures or loans usually attracts tax charged by deduction at the source when the interest is paid. This method is, in fact, commonly used for practical reasons, as the tax charged at the source can

constitute an advance of the tax payable by the recipient in respect of his total income or profits. If in such a case the recipient is a resident of the country which practices deduction at the source, any double taxation he suffers is remedied by internal measures. But the position is different if he is a resident of another country: he is then liable to be taxed twice on the interest, first by the State of source and then by the State in which he resides. It is clear that his double charge of tax can reduce considerably the interest on the money lent and so hamper the movement of capital and the development of international investment."

Paragraph 3: Corresponds in part to paragraphs 14 and 15 of the 1963 Draft Convention. Paragraph 3 of the 1963 Draft Convention was amended and renumbered as paragraph 2 (see history of paragraph 2) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraphs 14 and 15 of the 1963 Draft Convention were amended and incorporated into paragraph 3 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraphs 14 and 15 read as follows:

"14. The discussions further showed that a formula reserving the exclusive taxation of interest to one State, whether the State of the recipient's residence or the State of source, could not be sure of receiving general approval. Some countries stated that their preference was for taxation in the State of residence, others for taxation in the State of source. A number of countries which practise taxation at the source considered that they would be able to give up the right to tax at the source if certain conditions were concurrently present; but they at once made it clear that they could not be bound by a text which left them no discretion in this respect.

15. The Fiscal Committee therefore has been obliged to turn towards a compromise solution, first laying down the principle that interest shall be taxed in the State of residence — particularly as this is the practice in the generality of the Member states — but leaving the State of source the right to impose a tax if its laws so provide, it being implicit in this right that the State of source is free to give up all taxation on interest paid to non-residents. Its exercise of this right will however be limited by a ceiling which its tax cannot exceed but, it goes without saying, the Contracting States can agree to adopt an even lower rate of taxation in the State of source. The sacrifice that the latter would accept in such conditions will be matched by a similar sacrifice for the State of residence, since it will have to take into account the tax levied in the State of source in order to prevent the double taxation that the interest would suffer if the State of residence imposed on itself no restriction in the exercise of its right (on this subject see Articles 23(A) and 23(B) on methods of avoiding double taxation in the State of residence of the recipient of the income)."

Paragraph 4: Amended on 23 July 1992, by replacing the reference to paragraph 5 of Article 24 with a reference to paragraph 4 of that Article, by the Report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 4 read as follows:

"4. Certain countries do not allow interest paid to be deducted for the purposes of the payer's tax unless the recipient also resides in the same State or is taxable in that State. Otherwise they forbid the deduction. The question whether the deduction should also be allowed in cases where the interest is paid by a resident of a Contracting State to a resident of the other State, is dealt with in paragraph 5 of Article 24."

Paragraph 4 of the 1977 Model Convention corresponded to paragraph 17 of the 1963 Draft Convention. Paragraph 4 of the 1963 Draft Convention was deleted and

paragraph 17 was amended and renumbered when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 17 read as follows:

"17. Certain countries do not allow interest paid to be deducted for the purposes of the payer's tax unless the recipient also resides in the same State or is taxable in that State. Otherwise they forbid the deduction. The Fiscal Committee considers it desirable that the deduction in question should also be allowed in cases where the interest is paid by a resident of a Contracting State to a resident of the other State, the case of fraud being, of course, reserved; it considers that the deduction should not be forbidden simply because the tax payable by the recipient of such interest is reduced in the State of source in application of the proposed Article. Any other method of procedure might cancel out the beneficial effects of the measures taken to avoid double taxation."

Paragraph 4 of the 1963 Draft Convention and the preceding heading were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 4 and the preceding heading read as follows:

"C. How Can Double Taxation of Interest be Avoided?

4. There is no point in re-opening doctrinal arguments on the respective merits of taxing interest in the State of source or in the State of the recipient's residence, according to whether the tax is impersonal or personal; or in considering whether the theoretically ideal solution would not be for the right to tax to be the privilege of the State of the creditor's residence, on the principle that movable property is intimately associated with the person of its owner and that tax on the income that is produces should properly be borne by the owner. Very detailed studies were made on this subject in the League of Nations. These resulted in the elaboration of different, not to say conflicting, proposals as to the taxation of interest."

Paragraph 5: Corresponds to paragraph 18 of the 1963 Draft Convention. Paragraph 5 of the 1963 Draft Convention was deleted and paragraph 18 was amended and renumbered as paragraph 5 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, the headings preceding paragraph 18 were amended and moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 18 and the preceding headings read as follows:

"II. COMMENTARY ON THE ARTICLE

Paragraph 1

18. This paragraph lays down the principle that interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in the latter. In doing so, it does not stipulate an exclusive right to tax in favour of the State of residence, but simply repeats the rule deriving from the generality of tax laws which include the right to tax income of this kind in the State of the recipient's residence."

Paragraph 5 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 5 read as follows:

"5. The fact is that countries which export capital and countries in which it is invested have apparently opposed interests. The former are naturally inclined to

advocate that income from exported capital should be taxed in the State of the recipient's residence, and the latter in the State of source of the income."

Paragraph 6: Replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 6 of the 1963 Draft Convention was deleted and a new paragraph 6 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 6 read as follows:

"6. Although the State in which the capital is invested may be entitled to tax income paid as interest on capital coming from another State, on the ground that the income results from the use of such capital and has its source in its territory, it would be exorbitant for it to claim that it alone had the right to tax it. The State exporting the capital can no less justifiably maintain that if the payment of the interest on the capital is made possible by the use of the capital, it is also, and primarily, due to the very existence of the capital, so that it too is justified in calling upon the owners of the capital — the recipients of the interest — to participate in the public expenses, by reason of their possession of such income."

Paragraph 7: Amended on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 7 read as follows:

"7. Paragraph 2 reserves a right to tax interest to the State in which the interest arises; but it limits the exercise of that right by determining a ceiling for the tax, which may not exceed 10 per cent. This rate may be considered a reasonable maximum bearing in mind that the State of source is already entitled to tax profits or income produced on its territory by investments financed out of borrowed capital. The Contracting States may agree in bilateral negotiations upon a lower tax or even on exclusive taxation in the State of the beneficiary's residence."

Paragraph 7 of the 1977 Model Convention corresponded to 19 of the 1963 Draft Convention. Paragraph 7 of the 1963 Draft Convention was deleted and paragraph 19 was amended and renumbered as paragraph 7 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, heading the preceding paragraph 18 was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 19 read as follows:

"19. Paragraph 2 reserves a right to tax interest to the State in which the interest arises; but it limits the exercise of that right by determining a ceiling for the tax, which may not exceed 10 per cent. This rate may be considered a reasonable maximum if it is remembered that the State of source is already entitled to tax profits or income produced on its territory by investments financed out of borrowed capital. The two Contracting States may agree through bilateral negotiations upon a lower tax or even on exclusive taxation in the State of the recipient's residence (see on this point the reservation entered by Italy which is recorded in Section III)."

Paragraph 7 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 4 read as follows:

"7. Thus it is clear that both solutions — that which would give an exclusive right to tax to the country of source of the interest and that which would reserve it to the country of the creditor's residence — are too rigid."

Paragraph 7.1: Added on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.2: Added on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.3: Added on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.4: Amended on 22 July 2010 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 15 July 2005 and until 22 July 2010, paragraph 7.4 read as follows:

> "7.4 Some States refrain from levying tax on income derived by other States, at least to the extent that such income is derived from activities of a governmental nature. In their bilateral conventions, many States wish to confirm or clarify the scope of that exemption with respect to interest. States wishing to do so may therefore agree to include the following category of interest in a paragraph providing for exemption of certain interest from taxation in the State of source:
>
> "*a)* is that State or the central bank, a political subdivision or local authority thereof;""

Paragraph 7.4 was added together with the heading preceding it on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.5: Added together with the heading preceding it on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.6: Added together with the heading preceding it on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.7: Amended on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 15 July 2005 and until 15 July 2014, paragraph 7.7 read as follows:

> "7.7 The problem described in paragraph 7.1, which essentially arises because taxation by the State of source is typically levied on the gross amount of the interest and therefore ignores the real amount of income derived from the transaction for which the interest is paid, is particularly important in the case of financial institutions. For instance, a bank generally finances the loan which it grants with funds lent to it and, in particular, funds accepted on deposit. Since the State of source, in determining the amount of tax payable on the interest, will usually ignore the cost of funds for the bank, the amount of tax may prevent the transaction from occurring unless the amount of that tax is borne by the debtor. For that reason, many States provide that interest paid to a financial institution such as a bank will be exempt from any tax at source. States wishing to do so may agree to include the following interest in a paragraph providing from exemption of certain interest from taxation in the State of source:
>
> *d)* is a financial institution;"

Paragraph 7.7 was added together with the heading preceding it on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.8: Corresponds to paragraph 14 of the 1977 Model Convention as it read before 15 July 2005. On that date paragraph 14 was amended and renumbered as paragraph 7.8 and the preceding heading was added by the report entitled "The 2005

Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 14 read as follows:

"14. The disadvantages just mentioned arise in business, particularly with the sale on credit of equipment, other commercial credit sales, and loans granted by banks. The supplier in such cases very often merely passes on to the customer, without any additional charge, the price he will himself have had to pay to a bank or an export finance agency to finance the credit; similarly, the banker generally finances the loan which he grants with funds lent to his bank and, in particular, funds accepted by him on deposit. In the case especially of the person selling equipment on credit, the interest is more an element of the selling price than income from invested capital."

Paragraph 14 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 14 of the 1963 Draft Convention was amended and incorporated into paragraph 3 (see history of paragraph 3) and a new paragraph 14 was added.

Paragraph 7.9: Corresponds to paragraph 16 of the 1977 Model Convention as it read before 15 July 2005. On that date paragraph 16 of the 1977 Model Convention was amended and renumbered as paragraph 7.9 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 16 read as follows:

"16. As regards, more particularly, the types of credit sale referred to in subparagraph *a)* of the text suggested above, they comprise not only sales of complete units, but also sales of separate components thereof. Furthermore, as regards credit sales of the types referred to in subparagraphs *a)* and *b)* of the suggested text, it is immaterial whether the interest is stipulated separately and as additional to the sale price, or is included from the outset in the price payable by instalments."

Paragraph 16 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 16 of the 1963 Draft Convention was deleted and a new paragraph 16 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 16 read as follows:

"16. Views were divided on the determination of the ceiling of the tax levied in the State of source. A very large majority, however, was found for a rate of 10 per cent. The reservations entered by some Member countries are indicated in Section III of this commentary."

Paragraph 7.10: Added together with the heading preceding it on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.11: Added on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 7.12: Corresponds to paragraph 17 of the 1977 Model Convention as it read before 15 July 2005. On that date paragraph 17 of the 1977 Model was amended and renumbered as paragraph 7.12 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 17 read as follows:

"17. Contracting States may add to the categories of interest enumerated in the text suggested in paragraph 15 above, other categories in regard to which the imposition of a tax in the State of source might appear to them to be undesirable. They may also agree that the exclusion of a right to tax in the State of source shall be limited to certain of the categories of interest mentioned."

Paragraph 17 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 17 of the 1963 Draft Convention was amended and renumbered as paragraph 4 (see history of paragraph 4) and a new paragraph 17 was added. At the same time, the heading preceding paragraph 17 of the 1963 Draft Convention was deleted. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, the heading preceding paragraph 17 read as follows:

"F. Deductibility of Interest for the Purposes of the Payer's Tax"

Paragraph 8: Corresponds to paragraph 12 of the 1977 Model Convention as it read before 15 July 2005. On that date paragraph 8 was renumbered as paragraph 9 (see history of paragraph 9) and paragraph 12 was renumbered as paragraph 8 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 12 of the 1977 Model Convention corresponded to paragraph 23 of the 1963 Draft Convention. Paragraph 12 of the 1963 Draft Convention was deleted and paragraph 23 was amended and renumbered as paragraph 12 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 23 read as follows:

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"23. Attention is drawn generally to the following case: the recipient of interest arising in a Contracting State is a company resident in the other Contracting State; all or part of its capital is held by shareholders resident outside that other State; its practice is not to distribute its profits in the form of dividends; and it enjoys preferential taxation treatment ("private investment company", "base company"). The question may arise whether, in the case of such a company, it is justifiable to allow in the State of source the restriction of tax which is provided in paragraph 2 of the Article. It may be appropriate, when bilateral negotiations are being conducted, to agree upon special exceptions to the taxing rule laid down in this Article, in order to define the treatment applicable to such companies."

Paragraph 12 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 12 read as follows:

"12. Finally, special treatment is applied to income from indebtedness secured by mortgage of immovable property, the taxation of which is often reserved to the State of the mortgaged property's situs (Netherlands-United Kingdom, 1948, Art. 8; Netherlands-Switzerland, 1951, Art. 3)."

Paragraph 8.1: Renumbered as paragraph 10 (see history of paragraph 10) on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 8.2: Renumbered as paragraph 11 (see history of paragraph 11) on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 9: Amended on 10 July 2014, by moving the last sentence to a new paragraph 9.1 and changing the words "ownership" to "owner" and "immediately received by" to "paid direct to", by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 15 July 2005 and until 15 July 2014, paragraph 9 read as follows:

"9. The requirement of beneficial ownership was introduced in paragraph 2 of Article 11 to clarify the meaning of the words "paid to a resident" as they are used

in paragraph 1 of the Article. It makes plain that the State of source is not obliged to give up taxing rights over interest income merely because that income was immediately received by a resident of a State with which the State of source had concluded a convention. The term "beneficial owner" is not used in a narrow technical sense, rather, it should be understood in its context and in light of the object and purposes of the Convention, including avoiding double taxation and the prevention of fiscal evasion and avoidance."

Paragraph 9 as it read after 15 July 2005 corresponded to paragraph 8. On 15 July 2005 paragraph 9 was renumbered as paragraph 12 (see history of paragraph 12) and paragraph 8 was renumbered as paragraph 9 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 8 was replaced on 28 January 2003 when it was amended and renumbered as paragraph 8.2 (see history of paragraph 11) and a new paragraph 8 was added by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 28 January 2003, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 9.1: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014. New paragraph 9.1 incorporated the final sentence of paragraph 9 as it read before 15 July 2014 (see history of paragraph 9).

Paragraph 10: Amended on 15 July 2014, by moving the last two sentences to a new paragraph 10.1 and changing the words "received by" to "paid to" and "immediate" to "direct", by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 15 July 2005 and until 15 July 2014, paragraph 10 and its footnote read as follows:

"10. Relief or exemption in respect of an item of income is granted by the State of source to a resident of the other Contracting State to avoid in whole or in part the double taxation that would otherwise arise from the concurrent taxation of that income by the State of residence. Where an item of income is received by a resident of a Contracting State acting in the capacity of agent or nominee it would be inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption merely on account of the status of the immediate recipient of the income as a resident of the other Contracting State. The immediate recipient of the income in this situation qualifies as a resident but no potential double taxation arises as a consequence of that status since the recipient is not treated as the owner of the income for tax purposes in the State of residence. It would be equally inconsistent with the object and purpose of the Convention for the State of source to grant relief or exemption where a resident of a Contracting State, otherwise than through an agency or nominee relationship, simply acts as a conduit for another person who in fact receives the benefit of the income concerned. For these reasons, the report from the Committee on Fiscal Affairs entitled "Double Taxation Conventions and the Use of Conduit Companies"[1] concludes that a conduit company cannot normally be regarded as the beneficial owner if, though the formal owner, it has, as a practical matter, very narrow powers which render it, in relation to the income concerned, a mere fiduciary or administrator acting on account of the interested parties.

1 Reproduced in Volume II at page R(6)-1."

Paragraph 19 as it read before 15 July 2005 corresponded to paragraph 8.1. On 15 July 2005 paragraph 10 was renumbered as paragraph 13 (see history of paragraph 13) and paragraph 8.1 was renumbered as paragraph 10 by the report

entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 8.1 was added on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 28 January 2003, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 10.1: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014. Paragraph 10.1 corresponds to the last two sentences of paragraph 10 as they read before 15 July 2014 (see history of paragraph 10).

Paragraph 10.2: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

Paragraph 10.3: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

Paragraph 10.4: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

Paragraph 11: Amended on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 15 July 2005 and until 15 July 2014, paragraph 11 read as follows:

> "11. Subject to other conditions imposed by the Article, the limitation of tax in the State of source remains available when an intermediary, such as an agent or nominee located in a Contracting State or in a third State, is interposed between the beneficiary and the payer but the beneficial owner is a resident of the other Contracting State (the text of the Model was amended in 1995 to clarify this point, which has been the consistent position of all member countries). States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 11 as it read after 15 July 2005 corresponded to paragraph 8.2. On 15 July 2005 paragraph 11 was renumbered as paragraph 14 (see history of paragraph 14) and paragraph 8.2 was renumbered as paragraph 11 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 8.2 as it read after 28 January 2003 corresponded to paragraph 8. On 28 January 2003 paragraph 8 was amended and renumbered as paragraph 8.2 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003, on the basis of another report entitled "Restricting the Entitlement to Treaty Benefits" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002). After 21 September 1995 and until 28 January 2003, paragraph 8 read as follows:

> "8. Under paragraph 2, the limitation of tax in the State of source is not available when an intermediary, such as an agent or nominee, is interposed between the beneficiary and the payer, unless the beneficial owner is a resident of the other Contracting State. (The text of the Model was amended in 1995 to clarify this point, which has been the consistent position of all Member countries.) States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 8 was amended on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention" adopted by the OECD Council on 21 September 1995. In the 1977 Model Convention and until 21 September 1995, paragraph 8 read as follows:

> "8. Under paragraph 2, the limitation of tax in the State of source is not available when an intermediary, such as an agent or nominee, is interposed between the beneficiary and the payer, unless the beneficial owner is a resident of the other Contracting State. States which wish to make this more explicit are free to do so during bilateral negotiations."

Paragraph 8 of the 1963 Draft Convention and the preceding heading were replaced of the 1977 Model Convention replaced when the 1977 Model Convention was adopted on 11 April 1977. At that time, paragraph 8 and the preceding heading were deleted and a new paragraph 8 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 8 and the preceding heading read as follows:

> "D. Solutions Adopted in the Bilateral Conventions Already Concluded for the Purpose of Avoiding Double Taxation
>
> 8. In the Conventions concluded between them the O.E.C.D. Member countries have adopted various methods for avoiding double taxation of interest."

Paragraph 12: Corresponds to paragraph 9 as it read before 15 July 2005. On that date paragraph 12 was renumbered as paragraph 8 (see history of paragraph 8) and paragraph 9 was renumbered as paragraph 12 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 9 was amended on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention" adopted by the OECD Council on 28 January 2003. After 23 July 1992 and until 28 January 2003, paragraph 9 read as follows:

> "9. The paragraph lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or by individual assessment. Procedural questions are not dealt with in this Article. Each State should be able to apply the procedure provided in its own law. Specific questions arise with triangular cases (see paragraph 53 of the Commentary on Article 24)."

Paragraph 9 was previously amended on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on , on the basis of paragraph 60 of another report entitled "Triangular Cases" (adopted by the OECD Council on 23 July 1992). In the 1977 Model Convention and until 23 July 1992, paragraph 9 read as follows:

> "9. The paragraph lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own laws and, in particular, to levy the tax either by deduction at source or by individual assessment."

Paragraph 9 of the 1977 Model Convention corresponded to paragraph 20 of the 1963 Draft Convention. Paragraph 9 of the 1963 Draft Convention was deleted and paragraph 20 was renumbered as paragraph 9 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 20 read as follows:

> "20. Paragraph 2 of the Article lays down nothing about the mode of taxation in the State of source. It therefore leaves that State free to apply its own law and, in particular, to levy the tax either by deduction at source or by individual assessment."

Paragraph 9 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 9 read as follows:

"9. Sometimes taxation is reserved exclusively to the State of source (see Convention concluded in 1957, between Italy and the Netherlands, Art. 8), or to the State of the recipient's residence (see Denmark-Netherlands 1957, Art. 10; France-Norway, 1953, Art. 9; Denmark-France, 1957, Arts. 8 and 9; France-Netherlands, 1949, and Additional Agreement of 1952, Arts. 8 and 9; France-Sweden, 1936, and Additional Agreement of 1950, Arts. 8 and 9; Netherlands-Sweden, 1952, Art. 10)."

Paragraph 13: Corresponds to paragraph 10 as it read before 15 July 2005. On that date paragraph 13 was deleted and paragraph 10 was renumbered as paragraph 13 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 10 of the 1977 Model Convention corresponded to paragraph 21 of the 1963 Draft Convention. Paragraph 10 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 21 of the 1963 Draft Convention was amended and renumbered as paragraph 10. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 21 read as follows:

"21. It does not specify whether the relief in the State of source should be conditional upon the interest being subject to tax in the State of residence. It has already been stated that taxation in the State of residence is the general rule. There is, however, nothing to prevent the formula proposed in paragraph 2 from being supplemented in this respect by means of bilateral negotiations."

Paragraph 10 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 10 read as follows:

"10. Sometimes taxation is shared between the State of the recipient's residence and the State of source (see Denmark-Switzerland, 1957, Arts. 2 and 9; Norway-Switzerland, 1956, Arts. 2 and 9; France-Switzerland 1953, Art. 10; United States-France, 1956, Art. 6 A (new) of the Convention of 1939, and Art. 14; France-Germany, 1959, Art. 10, para. 1)."

Paragraph 13 of the 1977 Model Convention was deleted on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 13 read as follows:

"13. It should, however, be pointed out that the solution adopted, given the combined effect of the right to tax accorded to the State of source and the allowance to be made for the tax levied there against that due in the State of residence, could, in certain cases, result in maintaining partial double taxation and lead to adverse economic consequences. In fact, when the beneficiary of the interest has himself had to borrow in order to finance the operation which earns him interest, the profit he will realise by way of interest will be much smaller than the nominal amount of interest he receives; if the interest he pays and that which he receives balance, there will be no profit at all. In such a case, the allowance to be made under paragraph 2 of Article 23 A, or paragraph 1 of Article 23 B, raises a difficult and sometimes insoluble problem in view of the fact that the tax levied in the State where the interest arises is calculated on the gross amount thereof, whereas the same interest is reflected in the beneficiary's business results at its net amount only. The result of this is that part, or sometimes even the whole amount, of the tax levied in the State where the interest arises cannot be allowed as a credit in the beneficiary's State of residence and so constitutes an excess charge for the beneficiary, who, to that extent,

suffers double taxation. Moreover, the latter, in order to avoid the disadvantage just mentioned, will tend to increase the rate of interest he charges his debtor, whose financial burden would then be increased to a corresponding extent. Thus in certain cases the practice of taxation at the source can constitute an obstacle to international trade. Furthermore, if the payer of the interest happens to be the State itself, a public sector institution, or an enterprise guaranteed by the State, the end result may well be that the tax levied at source is actually borne by the Treasury of the debtor's State, which latter thus derives no real benefit from its own taxation."

Paragraph 13 of the 1963 Draft Convention and the preceding heading were replaced when the 1977 Model Convention was adopted on 11 April 1977. At that time, paragraph 13 and the preceding heading were deleted and a new paragraph 13 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 13 and the preceding heading read as follows:

"E. Solution Adopted by the Fiscal Committee of O.E.C.D

13. The Fiscal Committee's discussions first of all showed that all the O.E.C.D. Member countries tax interest arising abroad to their residents, two-thirds of them tax interest arising in their territories to non-residents and one-third do not tax interest at the source at all."

Paragraph 14: Corresponds to paragraph 11 as it read before 15 July 2005. On that date paragraph 14 was amended and renumbered as paragraph 7.8 (see history paragraph 7.8) and paragraph 11 of 1977 Model Convention was renumbered as paragraph 14 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 11 of the 1977 Model Convention corresponded to paragraph 22 of the 1963 Draft Convention. Paragraph 11 of the 1963 Draft Convention was deleted and paragraph 22 of the 1963 Draft Convention was amended and renumbered as paragraph 11 when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 22 read as follows:

"22. Moreover, the Article contains no provisions concerning any obligation on the State of the Recipient's residence to take account of the tax in the State of source of the interest. This question is dealt with in Articles 23(A) and 23(B) concerning method of avoiding double taxation in the former State."

Paragraph 11 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 11 read as follows:

"11. In other cases the tax in the State of source is to be levied at the ordinary rate and credit given for it against the tax payable in the State of the recipient's residence (see Belgium-France, 1931, Art. 6; Italy-Sweden, 1956, Art. 9)."

Paragraph 15: Deleted on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. In the 1977 Model Convention and until 15 July 2005, paragraph 15 read as follows:

"15. If two Contracting States, in order to eliminate all risks of double taxation, should desire to avoid the imposition of a tax in the State of source on interest arising from the above-mentioned categories of debts, their common intention can be expressed by an additional paragraph which would follow paragraph 2 of the Article, and which might be drafted in the following terms:

"3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if such interest is paid:

a) in connection with the sale on credit of any industrial, commercial or scientific equipment,

b) in connection with the sale on credit of any merchandise by one enterprise to another enterprise, or

c) on any loan of whatever kind granted by a bank.""

Paragraph 15 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 15 of the 1963 Draft Convention was amended and incorporated into paragraph 3 (see history of paragraph 3) and a new paragraph 15 was added.

Paragraph 16: Amended and renumbered as paragraph 7.9 (see history of paragraph 7.9) on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 17: Amended and renumbered as paragraph 7.12 (see history of paragraph 7.12) on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 18: Amended on 23 July 1992, by deleting the sixth sentence and by moving the seventh and subsequent sentences to a new paragraph 20 (see history of paragraph 20), by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 18 read as follows:

"18. Paragraph 3 specifies the meaning to be attached to the term "interest" for the application of the taxation treatment defined by the Article. The term designates, in general, income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits. The term "debt-claims of every kind" obviously embraces cash deposits and security in the form of money, as well as Government securities, and bonds and debentures, although the three latter are specially mentioned because of their importance and of certain peculiarities that they may present. It is recognised, on the one hand, that mortgage interest comes within the category of income from movable capital ("revenus de capitaux mobiliers"), even though certain countries assimilate it to income from immovable property. On the other hand, debt-claims, and bonds and debentures in particular, which carry a right to participate in the debtor's profits are nonetheless regarded as loans if the contract by its general character clearly evidences a loan at interest. In the contrary case, where the participation in profits rests upon a provision of funds that is subject to the hazards of the enterprise's business, the operation is not in the nature of a loan and Article 11 does not apply. As regards, more particularly, Government securities, and bonds and debentures, the text specifies that premiums or prizes attaching thereto constitute interest. Generally speaking, what constitutes interest yielded by a loan security, and may properly be taxed as such in the State of source, is all that the institution issuing the loan pays over and above the amount paid by the subscriber, that is to say, the interest accruing plus any premium paid at redemption or at issue. It follows that when a bond or debenture has been issued at a premium, the excess of the amount paid by the subscriber over that repaid to him may constitute negative interest which should be deducted from the interest that is taxable. On the other hand, any profit or loss which a holder of such a security realises by the sale thereof to another person does not enter into the concept of interest. Such profit or loss may, depending on the case, constitute

either a business profit or a loss, a capital gain or a loss, or income falling under Article 21."

Paragraph 18 of the 1977 Model Convention corresponded to paragraph 24 of the 1963 Draft Convention. Paragraph 18 of the 1963 Draft Convention was amended and renumbered as paragraph 5 (see history of paragraph 5) and the preceding heading was moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 24 of the 1963 Draft Convention was amended and renumbered as paragraph 18 of the 1977 Model Convention and the preceding heading moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 24 read as follows:

"24. This paragraph specifies the meaning to be attached to the term "interest" for the application of the taxation treatment defined by the Article. In particular, the term designates income from bonds or debentures, whether or not secured by mortgage and whether or not carrying a fight to participate in profits, and debt claims of all kinds, including mortgages. Bonds or debentures which participate in profits are nonetheless regarded as loan securities if the contract of issue by its general character constitutes evidence of a loan at interest. It is also recognised that mortgage interest comes within the category of income from movable capital ("revenus de capitaux mobiliers"), although certain countries assimilate it to income from immovable capital."

Paragraph 19: Replaced paragraph 19 of the 1977 Model Convention on 23 July 1992 when paragraph 19 of the 1977 Model Convention was renumbered as paragraph 21 (see history of paragraph 21) and a new paragraph 19 was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, on the basis of paragraphs 59 and 60 and subparagraph 85 b) of a previous report entitled "Thin Capitalisation" (adopted by the OECD Council on 26 November 1986).

Paragraph 20: Amended on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 23 July 1992 and until 15 July 2014, paragraph 20 read as follows:

"20. As regards, more particularly, government securities, and bonds and debentures, the text specifies that premiums or prizes attaching thereto constitute interest. Generally speaking, what constitutes interest yielded by a loan security, and may properly be taxed as such in the State of source, is all that the institution issuing the loan pays over and above the amount paid by the subscriber, that is to say, the interest accruing plus any premium paid at redemption or at issue. It follows that when a bond or debenture has been issued at a premium, the excess of the amount paid by the subscriber over that repaid to him may constitute negative interest which should be deducted from the interest that is taxable. On the other hand, any profit or loss which a holder of such a security realises by the sale thereof to another person does not enter into the concept of interest. Such profit or loss may, depending on the case, constitute either a business profit or a loss, a capital gain or a loss, or income falling under Article 21."

Paragraph 20 of the 1977 Model Convention was replaced on 23 July 1992 when it was renumbered as paragraph 22 (see history of paragraph 22) and a new paragraph 20, which contains the text of the part of paragraph 18 of the 1977 Model Convention that followed the 6th sentence thereof (see history of paragraph 18), was added by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 20.1: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

Paragraph 21: Corresponds to paragraph 19 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 21 of the 1977 Model Convention was renumbered as paragraph 23 (see history of paragraph 23) and paragraph 19 was renumbered as paragraph 21 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 19 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 19 of the 1963 Draft Convention was amended and renumbered as paragraph 7 (see history of paragraph 7), the preceding heading was moved with it and a new paragraph 19 was added.

Paragraph 21.1: Added on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995.

Paragraph 22: Corresponds to paragraph 20 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 22 of the 1977 Model Convention was renumbered as paragraph 24 (see history of paragraph 24), the heading preceding paragraph 22 was moved with it and paragraph 20 was renumbered as paragraph 22 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 20 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 20 of the 1963 Draft Convention was amended and renumbered as paragraph 9 (see history of paragraph 12) and a new paragraph 20 was added.

Paragraph 23: Corresponds to paragraph 21 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 23 of the 1977 Model Convention was renumbered as paragraph 25 (see history of paragraph 25) and paragraph 21 was renumbered as paragraph 23 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 21 of the 1977 Model Convention corresponded to paragraph 26 of the 1963 Draft Convention. Paragraph 21 of the 1963 Draft Convention was amended and renumbered as paragraph 10 (see history of paragraph 11) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 26 of the 1963 Draft Convention was amended and renumbered as paragraph 21 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 26 read as follows:

> "26. Finally, the question arose whether annuities ought to be assimilated to interest; it was decided that they ought not to be. On the one hand, annuities granted in consideration of past employment are referred to in Article 18 and are subject to the rules governing pensions. On the other hand, although it is true that installments of purchased annuities include an interest element on the purchase capital as well as return of capital, such installments thus constituting "fruits civils" which accrue from day to day, it would be difficult for many countries to make a distinction between the element representing income from capital and the element representing a return of capital in order merely to tax the income element under the same category as income from movable capital. Taxation laws often contain special provisions classifying annuities in the category of salaries, wages and pensions, and taxing them accordingly."

Paragraph 24: Corresponds to paragraph 22 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 24 of the 1977 Model Convention was renumbered as paragraph 26 (see history of paragraph 26) and the heading preceding paragraph 24 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time,

paragraph 22 was renumbered as paragraph 24 and the heading preceding paragraph 22 was moved with it

Paragraph 22 of the 1977 Model Convention corresponded to paragraph 27 of the 1963 Draft Convention. Paragraph 22 of the 1963 Draft Convention was amended and renumbered as paragraph 11 (see history of paragraph 12) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 27 of the 1963 Draft Convention was amended and renumbered as paragraph 22 of the 1977 Model Convention and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 27 read as follows:

> "27. Certain States consider that dividends, interest and royalties arising from sources in their territory and payable to individuals or legal persons who are residents of other States fall outside the scope of the arrangement made to prevent them from being taxed both in the State of source and in the State of the recipient's residence when the recipient possesses a permanent establishment in the former State. Paragraph 4 of the Article is not based on such a conception which is sometimes referred to as "the force of attraction of the permanent establishment". It does not stipulate that interest arising to a resident of a Contracting State from a source situated in the territory of the other State must, by a kind of legal presumption, or fiction even, be related to a permanent establishment which that resident may happen to possess in the latter State, so that the said State would not be obliged to limit its taxation in such a case. The paragraph merely provides that in the State of source the interest is taxable as part of the profits of the permanent establishment there owned by the recipient residing in the other State, if it is paid in respect of debt claims forming part of the assets of the permanent establishment or otherwise effectively connected with that establishment. In that case, paragraph 4 relieves the State of source of the interest from any limitation under the Article. The foregoing explanations accord with those in the Commentaries on Article 7 on the taxation of business profits."

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Paragraph 25: Amended on 22 July 2010 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 28 January 2003 and until 22 July 2010, paragraph 25 read as follows:

> "25. It has been suggested that the paragraph could give rise to abuses through the transfer of loans to permanent establishments set up solely for that purpose in countries that offer preferential treatment to interest income. Apart from the fact that such abusive transactions might trigger the application of domestic anti-abuse rules, it must be recognised that a particular location can only constitute a permanent establishment if a business is carried on therein and, also, that the requirement that a debt-claim be "effectively connected" to such a location requires that the debt-claim be genuinely connected to that business."

Paragraph 25 was added on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003, on the basis of another report entitled "Issues Arising under Article 5 (Permanent Establishment) of the Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 7 November 2002).

Paragraph 25 as it read before 29 April 2000 was deleted by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of the Annex of another report entitled "Issues Related to Article 14 of the OECD Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). After 23 July 1992 and until 29 April 2000, paragraph 25 read as follows:

> "25. The rules set out above also apply where the beneficiary of the interest has in the other Contracting State, for the purpose of performing any of the kinds of independent personal services mentioned in Article 14, a fixed base with which the debt-claim in respect of which the interest is paid is effectively connected."

Paragraph 25 as it read after 23 July 1992 corresponded to paragraph 23 of the 1977 Model Convention. On 23 July 1992 paragraph 25 was renumbered as paragraph 27 (see history of paragraph 27) and paragraph 23 was renumbered as paragraph 25 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 23 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 23 of the 1963 Draft Convention was amended and renumbered as paragraph 12 (see history of paragraph 8) and a new paragraph 23 was added.

Paragraph 25.1: Added on 22 July 2010 by the report entitled the "2010 Update to the Model Tax Convention" adopted by the OECD Council on 22 July 2010.

Paragraph 25.2: Added on 22 July 2010 by the report entitled the "2010 Update to the Model Tax Convention" adopted by the OECD Council on 22 July 2010.

Paragraph 26: Amended on 21 September 1995 by the report entitled "The 1995 Update to the Model Tax Convention" adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 26 read as follows:

> "26. This paragraph lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident, who may, moreover, be that State itself or one of its political subdivisions or local authorities. It provides, however, for an exception to this rule in the case of interest-bearing loans which have an obvious economic link with a permanent establishment owned in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of the permanent establishment, even when he resides in a third State."

Paragraph 26 as it read after 23 July 1992 corresponded to paragraph 24 of the 1977 Model Convention. On 23 July 1992 paragraph 26 of the 1977 Model Convention was renumbered as paragraph 28 (see history of paragraph 28), paragraph 24 was renumbered as paragraph 26 and the heading preceding paragraph 24 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 24 of the 1977 Model Convention corresponded to paragraph 28 of the 1963 Draft Convention. Paragraph 24 of the 1963 Draft Convention was amended and renumbered as paragraph 18 (see history of paragraph 18) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 28 of the 1963 Draft Convention was amended and renumbered as paragraph 24 of the 1977 Model Convention and the preceding heading was moved with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 28 read as follows:

> "28. This paragraph lays down the principle that the State of source of the interest is the State in which the payer of the interest resides, who may, moreover, be that State itself or one of its political subdivisions. It provides, however, for an exception to this rule in the case of interest bearing loans which have an obvious

economic link with a permanent establishment owned in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of that establishment and the interest is borne by the latter, the paragraph determines that the source of the interest is in the Contracting State in which the permanent establishment is situated, leaving aside the place of residence of the owner of the permanent establishment, even where he resides in a third State."

Paragraph 27: Corresponds to paragraph 25 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 27 of the 1977 Model Convention was renumbered as paragraph 29 (see history of paragraph 29) and paragraph 25 was renumbered as paragraph 27 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 25 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted on 11 April 1977. At that time, paragraph 25 was deleted and a new paragraph 25 was added. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 25 read as follows:

"25. In any case, the Article does not give a complete and exhaustive list of the various kinds of interest. Such a list might not be fully in harmony with the various States' laws, which may differ among themselves in their interpretation of the concept of interest. It therefore seems preferable to include in a general formula all income which is assimilated by those laws to remuneration on money lent. This applies in particular to interest derived from cash deposits and security lodged in money."

Paragraph 28: Corresponds to paragraph 26 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 28 of the 1977 Model Convention was renumbered as paragraph 30 (see history of paragraph 30) and paragraph 26 was renumbered as paragraph 28 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 26 of the 1977 Model Convention corresponded to paragraph 29 of the 1963 Draft Convention. Paragraph 26 of the 1963 Draft Convention was amended and renumbered as paragraph 21 (see history of paragraph 23) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 29 of the 1963 Draft Convention was amended and renumbered as paragraph 26 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 29 read as follows:

"29. Paragraph 5 provides no solution for the case, which it excludes from its provisions, where both the recipient and the payer are indeed residents of the Contracting States, but the loan was borrowed for the requirements of a permanent establishment owned by the payer in a third State and the interest is borne by that establishment. As paragraph 5 of the Article now stands, therefore, only its first sentence will apply in such a case. The interest will be deemed to arise in the Contracting State where the payer resides, and not in the third State in whose territory is situated the permanent establishment for the account of which the loan was effected and by which the interest is payable. Thus the interest will be taxed both in the Contracting State where the payer resides and in the Contracting State where the recipient resides. But, although double taxation will be avoided between these two States by the arrangements provided in the Article, it will not be avoided between them and the third State if the latter taxes the interest on the loan at the source when it is borne by the permanent establishment in its territory."

Paragraph 29: Amended on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. After 23 July 1992 and until 15 July 2005, paragraph 29 read as follows:

> "29. It has not, however, been considered possible to refer to such a case in a bilateral convention and provide for it a solution consisting for example, in obliging the Contracting State of the payer's residence to relinquish its tax at the source in favour of the third State in which is situated the permanent establishment for the account of which the loan was effected and by which the interest is borne. The risk of double taxation just referred to can only be fully avoided through a bilateral convention containing a similar provision to that in paragraph 5, between the Contracting State of which the payer of the interest is a resident and the third State in which the permanent establishment paying the interest is situated, or through a multilateral convention containing such a provision."

Paragraph 29 as it read after 23 July 1992 corresponded to paragraph 27 of the 1977 Model Convention. On 23 July 1992 paragraph 29 was amended and renumbered as paragraph 31 (see history of paragraph 31) and paragraph 27 was renumbered as paragraph 29 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 27 of the 1977 Model Convention corresponded to paragraph 30 of the 1963 Draft Convention. Paragraph 27 of the 1963 Draft Convention was amended and renumbered as paragraph 22 (see history of paragraph 24) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 30 of the 1963 Draft Convention was amended and renumbered as paragraph 27 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 30 read as follows:

> "30. It has not, however, been considered possible to refer to such a case in a bilateral Convention and provide for it a solution consisting, for example, in obliging the Contracting State of the payer's residence to relinquish its tax at the source in favour of the third State in which is situated the permanent establishment for the account of which the loan was effected and by which the interest is borne. The risk of double taxation just referred to can only be fully avoided through a bilateral Convention containing a similar provision to that in paragraph 5 of the proposed Article, between the Contracting State where the payer of the interest resides and the third State in which the permanent establishment paying the interest is situated, or through a multilateral Convention containing such a provision."

Paragraph 30: Amended on 15 July 2005 by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005. After 29 April 2000 and until 15 July 2005, paragraph 30 read as follows:

> "30. Moreover, in the case — not settled in paragraph 5 — where whichever of the two Contracting States is that of the payer's residence and the third State in which is situated the permanent establishment for the account of which the loan is effected and by which the interest is borne, together claim the right to tax the interest at the source, there would be nothing to prevent those two States together with, where appropriate, the State of the beneficiary's residence from concerting measures to avoid the double taxation that would result from such claims. The proper remedy, it must be said again, would be the establishment between these different States of bilateral conventions, or a multilateral convention, containing a provision similar to that in paragraph 5. Another solution would be for two Contracting States to word the second sentence of paragraph 5 in the following way:

> "Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.""

Paragraph 30 was previously amended on 29 April 2000, by deleting the words "or fixed base" and "or a fixed base", by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000 on the basis of the Annex of another report entitled "Issues Related to Article 14 of the OECD Model Tax Convention" (adopted by the OECD Committee on Fiscal Affairs on 27 January 2000). After 23 July 1992 and until 29 April 2000, paragraph 30 read as follows:

"30. Moreover, in the case — not settled in paragraph 5 — where whichever of the two Contracting States is that of the payer's residence and the third State in which is situated the permanent establishment for the account of which the loan is effected and by which the interest is borne, together claim the right to tax the interest at the source, there would be nothing to prevent those two States together with, where appropriate, the State of the beneficiary's residence from concerting measures to avoid the double taxation that would result from such claims. The proper remedy, it must be said again, would be the establishment between these different States of bilateral conventions, or a multilateral convention, containing a provision similar to that in paragraph 5. Another solution would be for two Contracting States to word the second sentence of paragraph 5 in the following way:

> "Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a State other than that of which he is a resident a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.""

Paragraph 30 as it read after 23 July 1992 corresponded to paragraph 28 of the 1977 Model Convention. On 23 July 1992 paragraph 30 of the 1977 Model Convention was renumbered as paragraph 32 (see history of paragraph 32), the preceding heading was moved with it and paragraph 28 was renumbered as paragraph 30 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 28 of the 1977 Model Convention corresponded to paragraph 31 of the 1963 Draft Convention. Paragraph 28 of the 1963 Draft Convention was amended and renumbered as paragraph 24 (see history of paragraph 26) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 31 of the 1963 Draft Convention was amended and renumbered as paragraph 28 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 31 read as follows:

"31. Moreover, in the case — not settled in paragraph 5 of the Article — where whichever of the two Contracting States is that of the payer's residence and the third State in which is situated the permanent establishment for the account of which the loan is effected and by which the interest is borne, together claim the right to tax the interest at the source, there would be nothing to prevent those two States — together with, where appropriate, the State of the recipient's residence —

from concerting measures to avoid the double taxation that would result from such claims. The proper remedy, it must be said again, would be the establishment between these different States of bilateral Conventions, or a multilateral Convention, containing a provision similar to that in paragraph 5 of the Article."

Paragraph 31: Corresponds to paragraph 29 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 31 of the 1977 Model Convention was amended and renumbered as paragraph 33 (see history of paragraph 33) by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, paragraph 29 was renumbered as paragraph 31 and amended, by replacing the reference therein to paragraphs 26 to 28 by a reference to paragraphs 28 to 30. In the 1977 Model Convention and until 23 July 1992, paragraph 30 read as follows:

"29. If two Contracting States agree in bilateral negotiations to reserve to the State where the beneficiary of the income resides the exclusive right to tax such income, then ipso facto there is no value in inserting in the convention which fixes their relations that provision in paragraph 5 which defines the State of source of such income. But it is equally obvious that double taxation would not be fully avoided in such a case if the payer of the interest owned, in a third State which charged its tax at the source on the interest, a permanent establishment for the account of which the loan had been borrowed and which bore the interest payable on it. The case would then be just the same as is contemplated in paragraphs 26 to 28 above."

C (11)

Paragraph 29 of the 1977 Model Convention corresponded to paragraph 32 of the 1963 Draft Convention. Paragraph 29 of the 1963 Draft Convention was amended and renumbered as paragraph 26 (see history of paragraph 28) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 32 of the 1963 Draft Convention was amended and renumbered as paragraph 29 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 32 read as follows:

"32. It goes without saying that if two Contracting States agree in bilateral negotiations to reserve to the State where the recipient of the income resides the exclusive right to tax such income, then ipso facto there is no value in inserting in the Convention which fixes their relations that provision in paragraph 5 of the Article which defines the State of source of such income. But it is equally obvious that double taxation would not be fully avoided in such a case if the payer of the interest owned, in a third State which charged its tax at the source on the interest, a permanent establishment for the account of which the loan had been borrowed and which bore the interest payable on them. The case would then be just the same as is contemplated in paragraphs 29 to 31 above."

Paragraph 32: Corresponds to paragraph 30 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 32 of the 1977 Model Convention was renumbered as paragraph 34 (see history of paragraph 34), paragraph 30 was renumbered as paragraph 32 and the heading preceding paragraph 30 was moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 30 of the 1977 Model Convention corresponded to paragraph 33 of the 1963 Draft Convention. Paragraph 30 of the 1963 Draft Convention was amended and renumbered as paragraph 27 (see history of paragraph 29) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 33 of the 1963 Draft Convention was amended and renumbered as paragraph 30 of the 1977 Model Convention and the preceding heading was moved

with it. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 33 read as follows:

> "33. The purpose of this paragraph is to restrict the operation of the provisions concerning the taxation of interest in cases where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid exceeds the amount which would have been agreed upon by the payer and the recipient had they stipulated at arm's length. It provides that in such a case the provisions of the Article apply only to that last-mentioned amount and that the excess part of the interest shall remain taxable according to the laws of the two Contracting States, due regard being had to the other provisions of the Convention."

Paragraph 33: Corresponds to paragraph 31 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 33 was amended and renumbered as paragraph 35 (see history of paragraph 35) and paragraph 31 was renumbered as paragraph 33 and amended, by substituting the words "both of them and some other person" for "either of them and some other person" at the end of the first sentence, by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 31 read as follows:

C (11)

> "31. It is clear from the text that for this clause to apply the interest held excessive must be due to a special relationship between the payer and the beneficial owner or between either of them and some other person. There may be cited as examples cases where interest is paid to an individual or legal person who directly or indirectly controls the payer, or who is directly or indirectly controlled by him or is subordinate to a group having common interest with him. These examples, moreover, are similar or analogous to the cases contemplated by Article 9."

Paragraph 31 of the 1977 Model Convention corresponded to paragraph 34 of the 1963 Draft Convention. Paragraph 31 of the 1963 Draft Convention was amended and renumbered as paragraph 28 (see history of paragraph 30) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 34 of the 1963 Draft Convention was amended and renumbered as paragraph 31 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 34 read as follows:

> "34. It is clear from the text that for this clause to apply the interest held excessive must be due to a special relationship between the payer and the recipient or between either of them and some other person. There may be cited as examples cases where interest is paid to an individual or legal person who directly or indirectly controls the payer, or who is directly or indirectly controlled by him or is subordinate to a group having common interests with him. These examples, moreover, are similar or analogous to the cases contemplated by Article 9 on the taxation of associated enterprises."

Paragraph 34: Corresponds to paragraph 32 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 34 was renumbered as paragraph 36 (see history of paragraph 36) and paragraph 32 was renumbered as paragraph 34 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 32 of the 1977 Model Convention corresponded to paragraph 35 of the 1963 Draft Convention. Paragraph 32 of the 1963 Draft Convention was amended and renumbered as paragraph 29 (see history of paragraph 31) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time,

paragraph 35 of the 1963 Draft Convention was renumbered as paragraph 32 of the 1977 Model Convention.

Paragraph 35: Amended on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention" adopted by the OECD Council on 28 January 2003. After 23 July 1992 and until 28 January 2003, paragraph 35 read as follow:

"35. With regard to the taxation treatment to be applied to the excess part of the interest, the exact nature of such excess will need to be ascertained according to the circumstances of each case, in order to determine the category of income in which it should be classified for the purposes of applying the provisions of the tax laws of the States concerned and the provisions of the Convention. This paragraph permits only the adjustment of the rate at which interest is charged and not the reclassification of the loan in such a way as to give it the character of a contribution to equity capital. For such an adjustment to be possible under paragraph 6 of Article 11 it would be necessary to substitute other words for the phrase "having regard to the debt-claim for which it is paid". Nevertheless, this paragraph can affect not only the recipient but also the payer of excessive interest and if the law of the State of source permits, the excess amount can be disallowed as a deduction, due regard being had to other applicable provisions of the Convention. If two Contracting States should have difficulty in determining the other provisions of the Convention applicable, as cases require, to the excess part of the interest, there would be nothing to prevent them from introducing additional clarifications in the last sentence of paragraph 6, as long as they do not alter its general purport."

Paragraph 35 as it read after 23 July 1992 corresponded to paragraph 33 of the 1977 Model Convention. On 23 July 1992 paragraph 35 was amended and renumbered as paragraph 37 (see history of paragraph 37), the preceding heading was moved with it and paragraph 33 was amended and renumbered by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992, on the basis of paragraphs 61 and 62 of a previous report entitled "Thin Capitalisation" (adopted by the OECD Council on 26 November 1986). In the 1977 Model Convention and until 23 July 1992, paragraph 33 read as follows:

"33. With regard to the taxation treatment to be applied to the excess part of the interest, the exact nature of such excess will need to be ascertained according to the circumstances of each case, in order to determine the category of income in which it should be classified for the purposes of applying the provisions of the tax laws of the States concerned and the provisions of the Convention. If two Contracting States should have difficulty in determining the other provisions of the Convention applicable, as cases require, to the excess part of the interest, there would be nothing to prevent them from introducing additional clarifications in the last sentence of paragraph 6, as long as they do not alter its general purport."

Paragraph 33 of the 1977 Model Convention corresponded to paragraph 36 of the 1963 Draft Convention. Paragraph 33 of the 1963 Draft Convention was amended and renumbered as paragraph 30 (see history of paragraph 32) and the preceding heading was moved with it when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 36 of the 1963 Draft Convention was amended and renumbered as paragraph 33 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 36 read as follows:

"36. With regard to the taxation treatment to be applied to the excess part of the interest, the exact nature of such excess will need to be ascertained according to the circumstances of each case, in order to determine the category of income in which it should be classified for the purposes of applying the provisions of the tax

laws of the States concerned and the provisions of the Convention for the avoidance of double taxation."

Paragraph 36: Corresponds to paragraph 34 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 36 was deleted and paragraph 34 was renumbered as paragraph 36 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 34 of the 1977 Model Convention corresponded to paragraph 37 of the 1963 Draft Convention. Paragraph 34 of the 1963 Draft Convention was amended and renumbered as paragraph 31 (see history of paragraph 33) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 37 of the 1963 Draft Convention was amended and renumbered as paragraph 34 of the 1977 Model Convention. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 37 read as follows:

"37. It goes without saying that should the principles and rules of their respective laws oblige the two Contracting States to apply different Articles of the Convention for the purpose of taxing the excess, it will be necessary to resort to the mutual agreement procedure provided by the Convention in order to resolve the difficulty."

In the 1977 Model Convention and until it was deleted on 23 July 1992, paragraph 36 read as follows:

"36. The *United States* observes that the Article does not limit the taxation by internal law of interest not attributable to a United States permanent establishment in cases where 50 per cent or more of a non-resident payer's gross income is effectively connected with a trade or business in the United States. The United States is willing, in appropriate situations, to limit such taxation by making appropriate modifications in the text of the Article."

Paragraph 36 was previously replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. Paragraph 36 of the 1963 Draft Convention was amended and renumbered as paragraph 33 (see history of paragraph 35) and a new paragraph 36 was added.

Paragraph 37: Corresponds to paragraph 35 of the 1977 Model Convention as it read before 23 July 1992. On that date paragraph 37 of the 1977 Model Convention was amended and renumbered as paragraph 38 (see history of paragraph 38) and the headings preceding paragraph 37 were moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. At the same time, paragraph 35 was amended and renumbered as paragraph 37 and the heading preceding paragraph 37 was moved with it. In the 1977 Model Convention and until 23 July 1992, paragraph 35 read as follows:

"35. The *United Kingdom* does not adhere to paragraph 18 above. Under United Kingdom law, certain interest payments are treated as distributions, and are therefore dealt with under Article 10."

Paragraph 35 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 35 of the 1963 Draft Convention was renumbered as paragraph 32 (see history of paragraph 34) and a new paragraph 35 was added together with the heading preceding it.

Paragraph 38: Amended on 15 July 2014, by adding Israel to the list of countries making the reservation, by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 38 read as follows:

"38. *Chile*, *Hungary*, *Mexico*, *Portugal*, the *Slovak Republic* and *Turkey* reserve their positions on the rate provided in paragraph 2."

Paragraph 38 was previously amended on 22 July 2010, by adding Chile to the list of countries making the reservation, by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 28 January 2003 and until 22 July 2010, paragraph 38 read as follows:

"38. *Hungary*, *Mexico*, *Portugal*, the *Slovak Republic* and *Turkey* reserve their positions on the rate provided in paragraph 2."

Paragraph 38 was previously amended on 28 January 2003, by adding the Slovak Republic to the list of countries making the reservation, by the report entitled "The 2002 Update to the Model Tax Convention" adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 38 read as follows:

"38. *Hungary*, *Mexico*, *Portugal* and *Turkey* reserve their positions on the rate provided in paragraph 2."

Paragraph 38 was previously amended on 23 October 1997, by adding Hungary to the list of countries making the reservation, by the report entitled "The 1997 Update to the Model Tax Convention", adopted by the OECD Council on 23 October 1997. After 21 September 1995 and until 23 October 1997, paragraph 38 read as follows:

"38. *Mexico*, *Portugal* and *Turkey* reserve their positions on the rate provided in paragraph 2."

Paragraph 38 was previously amended on 21 September 1995, by adding Mexico and Turkey as countries making the reservation, by a Report by the Committee on Fiscal Affairs entitled "The 1995 Update to the Model Tax Convention", adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 38 read as follows:

"38. *Portugal* reserves its position on the rate provided in paragraph 2."

Paragraph 38 corresponded to paragraph 37 of the 1977 Model Convention. On 23 July 1992 paragraph 38 of the 1977 Model Convention was deleted, paragraph 37 was amended and renumbered as paragraph 38 and the headings preceding paragraph 37 were moved with it by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992. In the 1977 Model Convention and until 23 July 1992, paragraph 37 read as follows:

"37. *Belgium*, *Portugal* and *Spain* reserve their position on the rate provided in paragraph 2."

Paragraph 37 of the 1963 Draft Convention was replaced when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At that time, paragraph 37 of the 1963 Draft Convention was amended and renumbered as paragraph 34 (see history of paragraph 36) and a new paragraph 37 was added. Also at the same time, the section heading preceding paragraph 38 and the heading preceding paragraph 39 were moved immediately before paragraph 37.

In the 1977 Model Convention and until it was deleted on 23 July 1992, paragraph 38 read as follows:

"38. *Canada* reserves its position on paragraph 2 and wishes to retain a 15 per cent rate of tax at source in its bilateral conventions."

Paragraph 38 of the 1977 Model Convention corresponded to paragraph 40 of the 1963 Draft Convention. Paragraph 38 and the heading preceding it, as they read in the 1963 Draft Convention were deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 40 of the 1963 Draft Convention was amended and renumbered as paragraph 38. In the 1963 Draft

Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 40 read as follows:

"40. *Canada* reserves its position on the second paragraph of this Article."

Paragraph 38 of the 1963 Draft Convention was deleted when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. In the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) and until the adoption of the 1977 Model Convention, paragraph 38 read as follows:

"*Paragraphs 1 and 2*

38. In view of the special structure of its taxation system, Italy is unable to accept paragraphs 1 and 2 of the Article insofar as it applies to that country. However, in its bilateral Conventions for the avoidance of double taxation, Italy could possibly agree to the non-application of the progressive complementary tax on total income ("imposta complementare progressiva sul reddito complessivo") to interest arising from Italian sources to persons resident in the other Contracting State and, where such interest is not exempt from the tax on income from movable property ("imposta sui redditi di ricchezza mobile"), of the tax on bonds and debentures ("imposta sulle obbligazioni") as well."

Paragraph 39: Added on 15 July 2014 by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014.

Paragraph 39 as it read before 28 January 2003 was deleted by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003. After 23 July 1992 and until 28 January 2003, paragraph 39 read as follows:

"39. *Norway* reserves the right to treat interest as taxable only in the State where the beneficial owner of the interest is a resident."

Paragraph 39 was replaced on 23 July 1992 when paragraph 39 of the 1963 Draft Convention was amended and renumbered as paragraph 40 (see history of paragraph 41) and new paragraph 39 was added by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 40: Added on 29 April 2000 by the report entitled "The 2000 Update to the Model Tax Convention", adopted by the OECD Committee on Fiscal Affairs on 29 April 2000.

Paragraph 40 as it read before 21 September 1995 was deleted by the report entitled "The 1995 Update to the Model Tax Convention" adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 40 read as follows:

"40. *Turkey* reserves its position on the rate of tax in paragraph 2."

Paragraph 40, as it read after 23 July 1992, corresponded to paragraph 39 of the 1963 Draft Convention. On 23 July 1992 paragraph 40 of the 1977 Model Convention was renumbered as paragraph 45 (see history of paragraph 45), the heading preceding paragraph 40 was moved with it and paragraph 39 was amended and renumbered as paragraph 40 by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992. In the 1963 Draft Convention and until 30 July 1963, paragraph 39 read as follows:

"39. *Turkey* cannot accept a rate of tax which is lower than 20 per cent."

paragraph 40.1: Added on 15 July 2014 by the report entitled "The 2014 Update to the Model Tax Convention" adopted by the Council on 15 July 2014.

Paragraph 41: Amended on 28 January 2003 by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003. After 21 September 1995 and until 28 January 2003, paragraph 41 read as follows:

"41. *Greece* and *Mexico* reserve the right to exclude from the scope of this Article interest from debt-claim created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons. *Mexico* reserves the right to consider as interest other types of income, such as income derived from financial leasing and factoring contracts."

Paragraph 41 was previously amended on 21 September 1995, by the report entitled "The 1995 Update to the Model Tax Convention" adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 41 read as follows:

"41. *Greece* reserves it right to exclude from the scope of this Article interest from debt-claim created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons."

Paragraph 41 and the heading preceding it were added on 23 July 1992 by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 41 of the 1963 Draft Convention (adopted by the OECD Council on 30 July 1963) was renumbered as paragraph 40 (see history of paragraph 45) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977.

Paragraph 42: Amended on 15 July 2014, by adding Estonia to the list of countries making the reservation, by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 23 July 1992 and until 15 July 2014, paragraph 42 read as follows:

"42. *Belgium*, *Canada* and *Ireland* reserve the right to amend the definition of interest so as to secure that interest payments treated as distributions under their domestic law fall within Article 10."

Paragraph 42 was added on 23 July 1992 by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 43: Amended on 22 July 2010, by adding Chile to the list of countries making the reservation, by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 23 July 1992 and until 22 July 2010, paragraph 43 read as follows:

"43. *Canada* and *Norway* reserve the right to delete the reference to debt-claims carrying the right to participate in the debtor's profits."

Paragraph 43 was added on 23 July 1992 by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 44: Amended on 15 July 2014, by adding Chile to the list of countries making the reservation, by the Report entitled "The 2014 Update to the Model Tax Convention", adopted by the Council of the OECD on 15 July 2014. After 21 September 1995 and until 15 July 2014, paragraph 44 read as follows:

"44. *Greece*, *Portugal* and *Spain* reserve the right to widen the definition of interest by including a reference to their domestic law in line with the definition contained in the 1963 Draft Convention"

Paragraph 44 was previously amended on 21 September 1995, by adding Greece to the list of countries making the reservation, on 21 September 1995, by the report entitled "The 1995 Update to the Model Tax Convention" adopted by the OECD Council on 21 September 1995. After 23 July 1992 and until 21 September 1995, paragraph 44 read as follows:

"44. *Portugal* and *Spain* reserve the right to widen the definition of interest by including a reference to their domestic law in line with the definition contained in the 1963 Draft Convention."

Paragraph 44 was added on 23 July 1992 by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 45: Deleted, together with the preceding heading, on 22 July 2010 by the report entitled "The 2010 Update to the Model Tax Convention", adopted by the OECD Council on 22 July 2010. After 23 July 1992 and until 22 July 2010, paragraph 45 and the preceding heading read as follows:

"Paragraph 4

45. *Italy* reserves the right to subject interest to the taxes imposed by its law whenever the recipient thereof has a permanent establishment in Italy, even if the indebtedness in respect of which the interest is paid is not effectively connected with such permanent establishment."

Paragraph 45 as it read after 23 July 1992 corresponded to paragraph 40 of the 1977 Model Convention. On 23 July 1992 paragraph 40 of the 1977 Model Convention was renumbered as paragraph 45 and the heading preceding paragraph 40 was moved with it by the report entitled "The Revision of the 1977 Model Convention", adopted by the OECD Council on 23 July 1992.

Paragraph 40 of the 1977 Model Convention corresponded to paragraph 41 of the 1963 Draft Convention. Paragraph 40 of the 1963 Draft Convention was amended and renumbered as paragraph 38 (see history of paragraph 38) when the 1977 Model Convention was adopted by the OECD Council on 11 April 1977. At the same time, paragraph 41 of the 1963 Draft Convention was renumbered as paragraph 40 of the 1977 Model Convention.

Paragraph 46: Added with the heading preceding it on 15 July 2005, by the report entitled "The 2005 Update to the Model Tax Convention", adopted by the OECD Council on 15 July 2005.

Paragraph 46 as it read before 8 January 2003 was deleted, together with the heading preceding it, by the report entitled "The 2002 Update to the Model Tax Convention", adopted by the OECD Council on 28 January 2003. After 21 September 1995 and until 28 January 2003, paragraph 46 and the heading preceding it read as follows:

"Paragraph 6

46. As regards paragraph 6 of the Article, *Mexico* and the *United Kingdom* reserve the right (in accordance with paragraph 35 above) to include after "exceeds" the words "for whatever reason" in place of "having regard to the debt-claim for which it is paid". This permits interest and other payments in respect of certain loans to be dealt with as distributions in a range of circumstances provided for in its domestic law, including those where the amount of the loan or the rate of interest or other terms relating to it are not what would have been agreed in the absence of a special relationship."

Paragraph 46 was amended on 21 September 1995 by adding Mexico as a country making the Reservation, reflecting a Report by the Committee on Fiscal Affairs entitled "The 1995 Update to the Model Tax Convention". After 31 March 1994 and until 21 September 1995, paragraph 46 read as follows:

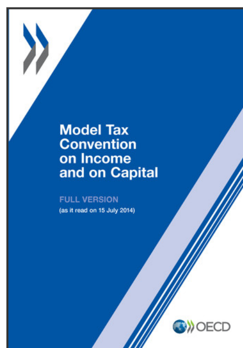
"46. As regards paragraph 6 of the Article, the *United Kingdom* reserves the right (in accordance with paragraph 35 above) to include after "exceeds" the words "for whatever reason" in place of "having regard to the debt-claim for which it is paid". This permits interest and other payments in respect of certain loans to be dealt with as distributions in a range of circumstances provided for in its domestic law,

> including those where the amount of the loan or the rate of interest or other terms relating to it are not what would have been agreed in the absence of a special relationship."

Paragraph 46 was previously amended on 31 March 1994 by the report entitled "1994 Update to the Model Tax Convention", adopted by the OECD Council on 31 March 1994. After 23 July 1992 and until 31 March 1994, paragraph 46 read as follows:

> "46. As regards paragraph 6 of the Article (see paragraph 32 above), the *United Kingdom* reserves the right to include after "exceeds" the words "for whatever reason" in place of "having regard to the debt-claim for which it is paid" so as to make it clear that abuse may occur not only where an uncommercial rate of interest is charged on the loan but also where the amount of the loan to which the interest relates exceeds that which would have been loaned between two parties acting at arm's length."

Paragraph 46 and the heading preceding it were added on 23 July 1992 by the report entitled "The Revision of the Model Convention", adopted by the OECD Council on 23 July 1992.



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